



REPUBLIC OF VANUATU

**CONSOLIDATION OF THE FRENCH AND ENGLISH
TEXTS OF THE LAWS OF VANUATU ACT [CAP 295]**

**Approval of the English Text of the
Government Contracts And Tenders Regulation Consolidation
Edition 2021
Order No. 160 of 2021**

In exercise of the powers conferred on me by subsection 9(1) of the Consolidation of the French and English Texts of the Laws of Vanuatu Act [CAP 295], I, the Honourable ESMON SIMON, Minister of Justice and Community Services, make the following Order:

**1 Approval of the English Text of the Government Contracts and
Tenders Regulation Consolidation Edition 2021**

The English Text of the Government Contracts and Tenders Regulation Consolidation Edition 2021 is approved.

2 Appointed day

The appointed day for the coming into operation of the Government Contracts and Tenders Regulation Consolidation Edition 2021 is the day on which this Order is made.

3 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 22nd day of Sept, 2021.

Honourable ESMON SIMON
Minister of Justice and Community Services



Commencement: 8 July 2021

GOVERNMENT CONTRACTS AND TENDERS REGULATION

Order 96 of 2021
Order 97 of 2021

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LAWS OF THE REPUBLIC OF VANUATU
Consolidated Edition 2021

GOVERNMENT CONTRACTS AND TENDERS

[CAP. 245]

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**GOVERNMENT CONTRACTS AND TENDERS
REGULATION**

PART 1 – PRELIMINARY MATTERS

1. Application

This Regulation applies to any procurement and disposal undertaken after this Regulation comes into force.

2. Interpretation

In this Regulation, unless the context otherwise requires:

"Act" means the Government Contracts and Tenders Act [CAP 245];

"disposal" includes the sale, transfer or destruction of an asset;

"head of an agency" has the same meaning as in the Public Finance and Economic Management Act [CAP 244];

"high value Government Contract" means a Government Contract with a value of VT10,000,000 or above;

"limited tender" includes:

- (a) two stages of tendering such as request for information followed by selected request for proposal; and
- (b) selective tendering where limited skills are available to perform the work required; and
- (c) sole source or single source tendering; and
- (d) other approved forms of tender;

"low value Government Contract" means a Government Contract with a value of less than VT10,000,000;

"low value Government Contract (Category A)" means a Government Contract with a value of VT 1,000,000 and above, but less than VT 10,000,000;

"low value Government Contract (Category B)" means a Government Contract with a value of over VT 100,000, but less than VT 1,000,000;

"low value Government Contract (Category C)" means a Government Contract with a value of less than VT 100,000;

"Ministry" means the Ministry of Finance and Economic Management;

"open tender" includes an open, competitive, and transparent process which requires an open approach to market to be published and submissions to be invited;

"procurement" means the supply of goods or services, or the execution of public works;

"procurement co-ordinator" means the person appointed as the procurement co-ordinator for the Government agency;

"standard tender document" means a standard tender document issued by the Board and approved by the State Law Office.

3. Requirements of splitting of Government contracts

- (1) The Board must approve for a high value Government Contract to be split by a Government agency.

- (2) The head of an agency must approve for a low value Government Contract to be split.
- (3) The head of an agency must advise the Board if the overall value of the low value Government Contracts being split results in a high value Government Contract.

PART 2 – PROCUREMENT METHODS

4. Procurement methods

- (1) Procurement methods for the supply of goods or services, or the execution of public works, includes open tenders, limited tenders, and request for quotation.
- (2) The procurement method used must be made in accordance with the requirements of this Regulation and with any directions issued or instruction or guidelines provided by the Director-General.

5. Open and limited tender

- (1) An open tender method must be used for a high value Government Contract and a low value Government Contract (Category A).
- (2) Despite subclause (1),:
 - (a) a head of an agency may approve the use of a limited tender for a low value Government Contract (Category A); and
 - (b) the Board may approve the use of a limited tender for a high value Government Contract, if the Board is satisfied that an open tender process is not likely to or will not, provide the best result.
- (3) In deciding whether or not to approve the use of a limited tender under subclause (2), the head of the agency or the Board, must take into account all of the following:
 - (a) the value of the Government Contract resulting from the procurement;
 - (b) whether any suitable tenderers have submitted a response to an open tender;
 - (c) whether the goods or services can be supplied or the public works executed only by a particular supplier and there is no reasonable alternative for any of the following reasons:
 - (i) the goods are works of art;
 - (ii) to protect patents, copyrights, or other intellectual property rights, or proprietary information;
 - (iii) there is an absence of competition for technical reasons;
 - (iv) when a change of supplier could compel the Government agency to procure goods, services or works that does not meet the requirements for compatibility with existing goods, services or works under the existing contracts;
 - (d) whether a Government agency is procuring prototypes or a first product or service which is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
 - (e) any other relevant matter the head of the agency or the Board considers necessary.
- (4) If a limited tender is used, the head of the agency must prepare a written statement to the Board to indicate the circumstance and conditions that justified the use of the limited tender.

- (5) A copy of the written statement must be provided to the Director-General.
- (6) An open or a limited tender must not be used as a procurement method for a low value Government Contracts (Categories B and C).
- (7) Despite subclause (6), a head of an agency may, approve the use of an open or a limited tender for low value Government Contracts (Categories B and C), if he or she is satisfied that it will result in the best overall value for the Government agency.

6. Written quotations

A potential supplier must provide a written quotation for Government contracts (Categories B and C) in accordance with the requirements of this Regulation.

7. Government Contract funded by a foreign donor

A Government Contract funded by a foreign donor is subject to the requirements of this Regulation, unless the Board determines that the requirements of the foreign donor are inconsistent with the requirements of this Regulation.

PART 3 – GENERAL TENDER REQUIREMENTS

8. Requirements of submitting a tender

A person must not submit a tender if the person is convicted of any of the following offences involving:

- (a) dishonesty, obstruction of justice or a lack of honesty or business integrity; or
- (b) corruption; or
- (c) anti-competitive practices, whether or not involving collusion.

9. General tender duties

- (1) For open and limited tenders, the Board or a Government agency must:
 - (a) not discriminate against tenderers, particularly on the basis of their location in Vanuatu; and
 - (b) ensure that tender is dealt with fairly; and
 - (c) ensure that the tender documents provide tenderers with all the information that are required in order to submit bids that are responsive to the needs of a Government agency; and
 - (d) use the standard tender documents issued by the Board and approved by the State Law Office, unless the Board or Government agency, and State Law Office approves otherwise.
- (2) Despite paragraph (1)(a), special consideration is to be given to the remoteness of a location and what will be the most practical benefit to the communities in that location.

10. Tenderers must be registered

- (1) A person who intends to participate in an open or limited tender process for a procurement must register as a supplier with the Ministry.
- (2) The Ministry must keep and maintain an up to date electronic register for suppliers.

11. Determination of expected value of Government Contract

The head of an agency must determine the expected value of a Government Contract before a decision is made on the tender method.

12. Advertising of open tenders and notification of limited tenders

- (1) The head of an agency is responsible to advertise the high value Government Contracts and low value Government Contracts (Category A).
- (2) When making an advertisement under subclause (1), the head of a Government agency must:
 - (a) publish a notice of a request for an open tender as follows:
 - (i) for a high value Government Contract - in a newspaper and on a website approved by the Board;
 - (ii) for a low value Government Contract (Category A) - on a website approved by the Board;
 - (iii) outside of Vanuatu if the Board or the head of an agency is satisfied that that goods, services or works being purchased are unlikely to be supplied at the best price or quality from within Vanuatu; and
 - (b) give written notice of a limited tender to suppliers that have the capacity to participate in the tender.
- (3) A notice of an open or a limited tender under subclause (2), must include the following information (if applicable):
 - (a) the address of the Board or Government agency and the contact details of a person from whom further information can be obtained; and
 - (b) sufficient information concerning the goods, services or public works, including technical specifications to enable prospective tenderers to determine the scope of the contract; and
 - (c) a statement providing for the qualification and award criteria to be applied together with any methods of evaluation; and
 - (d) the nature and time-frame of the procurement, including the place of delivery of goods or services, and the location of any works; and
 - (e) the manner for obtaining the tender documents; and
 - (f) the place and deadline for submission of tenders; and
 - (g) the date, time and venue of opening of the tender submission; and
 - (h) a statement providing that the Board or the Government agency is not bound to accept the lowest or highest tender or any tender; and
 - (i) a statement providing that a failure to comply with the tender instructions may lead to disqualification of the tender; and
 - (j) a statement providing that any attempt by a tenderer to influence the award of the tender, the tenderer will automatically be disqualified and may lead to criminal proceedings; and
 - (k) if the physical submission of a response to a tender is required - a statement providing that a tender must be in a sealed unmarked envelope, with the name of the tenderer and the tender reference appearing on the front of the envelope, as well as the details of the manner in which the envelopes containing tenders are to be addressed; and
 - (l) information about late tender submissions; and
 - (m) information that are required by the directions issued or instructions or guidelines provided by the Board or the Director-General; and
 - (n) details of how further information can be obtained.

- (4) For the purpose of paragraph (3)(b), a requirement or reference must not be made in the technical specifications to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other way of describing the procurement requirements.
- (5) For the purpose of paragraph (3)(c), qualification criteria are to be limited to those criteria which are designed to demonstrate that a tenderer possesses the necessary professional, technical qualifications, competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, business reputation and personnel, to perform the contract.
- (6) The Board or a head of an agency may make changes to the tender process before the deadline stated in the advertisement.
- (7) When making changes under subclause (6), the Board or the head of the Government agency must publish a notice or give written notice of the changes to the tender process in accordance with subclause (2).

13. Request for information about tender

- (1) The Board or a head of an agency must give a copy of:
 - (a) a tender to a person who requested the information about the tender; and
 - (b) additional information about a tender to a person who made a request under paragraph (a).
- (2) When providing a copy of additional information about a tender, the Board or a Government agency must avoid a potential supplier, or group of potential suppliers, gaining an unfair advantage in a competitive procurement process.

14. General requirements for submission of tender

- (1) A person who intends to submit a tender must comply with the tender requirements set out in the tender request form.
- (2) A tender submission received after the due date for submission of tenders must not be considered.
- (3) The names of the tenderers must not be made known to anyone prior to the opening of the tender submissions.
- (4) The content of tender submissions must be kept confidential and must not be disclosed to any person other than the members of the Board and the officers of the Government agency who are directly involved in the administration of the tender, until such time an award of contract is recommended.

15. General requirements for tender evaluation

The general requirements for a tender evaluation are:

- (a) tenders must achieve value for money outcomes; and
- (b) price is not the sole factor when assessing value for money and the tender evaluation must consider the relevant financial and non-financial costs and benefits of each tender, such as:
 - (i) support services provided, quality, fitness for purpose, delivery time frames, availability of accessories and add-ons, any preference for suppliers within Vanuatu, reputation and credit worthiness of the tenderer, environmental sustainability of the proposed goods or services, any broader benefits to the economy; and
 - (ii) whole of life costs such as the initial purchase price of the goods, services or works, maintenance and operating costs, licensing costs, the cost of additional

features procured after the initial procurement, consumable costs and disposal costs.

16. Evaluation Committee

- (1) The Board is to appoint the members of the evaluation committee, for an open or a limited tender for a high value Government Contract or a low value Government Contract (Category A).
- (2) To avoid doubt, no evaluation committee is to be appointed for a low value Government Contracts (Categories B and C).
- (3) The evaluation committee consists of:
 - (a) an officer within the Government agency with technical knowledge of the relevant goods, services or works nominated by the head of the Government agency; and
 - (b) a person nominated by the Director-General; and
 - (c) a person within or outside the Government agency with suitable qualifications and experience nominated by the head of the agency.
- (4) If a member is for any reason unable to attend a meeting of the evaluation committee, he or she may nominate his or her representative to represent him or her at the meeting of the evaluation committee.
- (5) A person must not be appointed as a member of the evaluation committee if the Board is satisfied that the person has an actual, potential or perceived conflict of interest in relation to the tender.
- (6) The quorum for a meeting of the evaluation committee is 3 members present at the meeting.

17. Evaluation committee's report

- (1) The evaluation committee must evaluate the tender submissions and provide its report to the:
 - (a) Board, for a high value Government Contract; and
 - (b) head of an agency, for a low value Government Contract.
- (2) The report must set out the details of the tender and contain the following information:
 - (a) an assessment of a reasonable cost for the tendered goods or services, or public works; and
 - (b) a ranking of tenderers set out in an order of merit list; and
 - (c) an assessment of the preferred tenderer and the reasons; and
 - (d) a description of the criteria and weighting used to evaluate the tenders; and
 - (e) an assessment of each tender submissions; and
 - (f) the details of the tenderer's previous performance (if any); and
 - (g) the details of the compliance by each tenderer with the tender conditions; and
 - (h) any other information as may be required by the standard tender documentation.
- (3) The report must be signed by all the members of the evaluation committee.
- (4) If a contract cannot be finalised with the preferred tenderer, the next preferred tenderer may be selected from the order of the merit list.

- (5) In cases of public works relating to construction or renovation, other than low value Government Contracts (Category C), works estimates and proposed contracts must be approved by the department responsible for public works before the evaluation committee produce its report to the Board.
- (6) The Director-General is to issue a guideline to guide the evaluation committee in making its assessment of reasonable cost.

18. Debriefing for unsuccessful tenderers

- (1) An unsuccessful tenderer may request a debrief from the Government agency.
- (2) The procurement co-ordinator must within 10 working days of receiving the request, debrief the unsuccessful tenderer.
- (3) The procurement co-ordinator, during a debrief, must:
 - (a) not disclose other supplier's confidential or commercial sensitive information; and
 - (b) provide information that helps the supplier to improve future tender submissions, such as the reasons why the tenderer was unsuccessful and how the tender submission performed against the evaluation criteria.

PART 4 – SPECIFIC REQUIREMENTS FOR HIGH VALUE AND LOW VALUE GOVERNMENT CONTRACTS

Division 1 – High value Government Contracts

19. Specific requirements for high value Government Contracts

A Government agency must use an open tender for a high value Government Contract, unless the Board approves the use of a limited tender.

20. Confirmation of Board required before advertising a tender

- (1) Before publishing a notice of request for an open tender or giving notice of a limited tender for a high value Government Contract, the Board must:
 - (a) obtain written confirmation from the Director of the Department of Finance that the Government agency has sufficient funding available to meet the requirements of the proposed Government Contract; and
 - (b) confirm in writing that the proposed tender method and documents complies with the Act and this Regulation.
- (2) Confirmation under paragraph (1)(a) may be provided on a case by case basis or on an annual basis at the start of the relevant year for all of the Government agency's proposed high value Government Contracts.
- (3) The Government agency must provide the details of any changes of a proposed Government Contract to the Board.

21. Submission of tenders

- (1) For a high value Government Contract, the method of tender submissions must be specified in the tender documents.
- (2) Without limiting subclause (1), a person may submit his or her tender to the Board:
 - (a) via email, or
 - (b) through a website or online portal approved by the Board; or
 - (c) physically, which must be in a sealed envelope.

22. Time for responding to notice of tender

A person who intends to submit a tender for a high value Government Contract must submit his or her tender:

- (a) for an open tender for a high value Government Contract of VT 100,000,000 and above – within 30 business days after the date of publication of the notice of request for the tender; and
- (b) for an open tender for a high value Government Contract of VT 10,000,000 and above but below VT100,000,000 – within 15 business days after the date of publication of the notice of request for tender; and
- (c) for a limited tender – within 10 business days after the date of the notice of the limited tender; and
- (d) for tenders advertised internationally - within 30 business days after the date of publication of a notice of request, for an open tender or after the date of giving notice, for a limited tender.

23. Opening of tender submissions

(1) The Secretary of the Board must open all tender submissions within 7 business days after the closing date for the submission of tenders in the presence of:

- (a) the Chairperson and 2 members of the Board; and
- (b) a representative from the procuring Government agency.

(2) The Secretary must prepare a list, setting out for each tender, the tender:

- (a) number; and
- (b) name; and
- (c) amount; and
- (d) and any special conditions of the tender.

(3) The list must be distributed to the members of the Board and all tenderers.

24. Specific requirements for tender evaluation

(1) The evaluation committee must submit its report to the Board within 15 business days after the opening of tender submissions.

(2) Despite subclause (1), the Chairperson of the Board may extend the period of submitting the report which must not exceed 40 business days, taking into account the following:

- (a) the size and complexity of the contract being tendered; and
- (b) the amount of time required to confirm and evaluate information presented in the tenders; and
- (c) any time frames or deadlines set for the project being considered; and
- (d) the workload of the Government agency.

25. Notification and contract award

(1) The Board must within 5 business days after receiving the report of the evaluation committee:

- (a) accept the recommendation to award the contract; or
- (b) request additional information or clarification from the evaluation committee if the Board is not satisfied with the report; or

- (c) decline to accept the recommendation to award the contract.
- (2) The evaluation committee must provide the additional information or clarification within 2 days after receiving the request.
- (3) The Board must prepare and submit a report of its decision to the Council:
 - (a) within those 5 business days when accepting the recommendation of the evaluation committee under paragraph (1)(a); or
 - (b) within 5 business days after receiving the additional information or clarification.
- (4) The Board must set out in its report:
 - (a) in the case where the Board accept the recommendation of the evaluation committee - the reasons for recommending the chosen tender, the evaluation criteria used, the reasons for using that evaluation criteria; and any other information that the Board considers relevant; and
 - (b) in the case where the Board does not accept the recommendation of the evaluation committee - the reasons for not accepting the recommendation.
- (5) The Council may approve or reject the recommendation of the Board.
- (6) If the Council approves the awarding of the contract, the Board must
 - (a) notify in writing, the decision of the Council to all the participating tenderers; and
 - (b) publish the decision on a website approved by the Board within 1 business day after receiving written decision of the Council.
- (7) A contract must be entered into by the Minister responsible for the Government agency with the supplier approved by the Council as soon as possible.
- (8) If the Council does not approve the awarding of a contract, the tender must be re-advertised.

Division 2 – Low value Government Contracts (Category A)

26. Application of Division

This Division applies to low value Government Contracts (Category A).

27. Specific requirements for low value Government Contracts (Category A)

- (1) A Government agency must use an open tender for a low value Government Contract (Category A).
- (2) Despite subclause (1), the head of an agency may approve the use of a limited tender for a low value Government Contract (Category A).

28. Confirmation of Director of the Department of Finance required before advertising tender

- (1) Before publishing a notice of request for an open tender or giving notice of a limited tender for a low value Government Contract (Category A), the head of an agency must obtain written confirmation from the Director of the Department of Finance that the agency has sufficient funding available to meet the requirements of the proposed Government Contract.
- (2) Confirmation under subclause (1) may be provided on a case by case basis or on an annual basis at the start of the relevant year for all the agency's proposed low value Government Contracts (Category A).

29. Submission of tenders

- (1) For a low value Government Contract (Category A), the method of tender submissions must be specified in the tender documents.
- (2) Without limiting subclause (1), a person may submit his or her tender to the Government agency:
 - (a) via email; or
 - (b) through a website or online portal approved by the Government agency; or
 - (c) physically, which must be in a sealed envelope.

30. Time for responding to notice of tender

A person who intends to submit a tender for a low value Government Contract (Category A) must submit his or her tender within:

- (a) 10 business days after the date of publication of the notice of request for an open tender; and
- (b) 5 business days after the date of giving notice of a limited tender.

31. Opening of tender submissions

- (1) The procurement co-ordinator of the Government agency must open all tender submissions within 5 business days after the closing date for the submission of tenders in the presence of the tenderers or their representatives.
- (2) The procurement co-ordinator must prepare a list, setting out for each tender, the tender:
 - (a) number; and
 - (b) name; and
 - (c) amount; and
 - (d) and any special conditions of the tender.
- (3) The list must be distributed to a tenderer upon his or her request.

32. Specific requirements for tender evaluation

- (1) The evaluation committee must submit its report to the head of the Government agency within 15 business days after the opening of tender submissions.
- (2) Despite subclause (1), the head of the agency may extend the period of submitting the report which must not exceed 30 business days, taking into account the following:
 - (a) the size and complexity of the contract being tendered; and
 - (b) the amount of time required to confirm and evaluate information presented in the tenders; and
 - (c) any time frames or deadlines set for the project being considered; and
 - (d) the workload of the Government agency.

33. Notification and contract award

- (1) The head of the agency must within 5 business days after receiving the report of the evaluation committee:
 - (a) accept the recommendation to award the contract; or
 - (b) request additional information or clarification from the evaluation committee if the head of the agency is not satisfied with the report.

- (2) The evaluation committee must provide additional information or clarification within 2 days after receiving the request.
- (3) The head of the agency must within 5 business days of receiving the additional information or clarification, make a decision as to whether to:
 - (a) accept the recommendation to award the contract; or
 - (b) reject the recommendation to award the contract.
- (4) The head of the agency must readvertise the tender if he or she rejects the recommendation to award the contract.
- (5) The procurement co-ordinator of the Government agency must:
 - (a) notify in writing the decision of the head of the agency to all participating tenderers; and
 - (b) publish the decision on a website within 1 business day after the decision.
- (6) A contract must be entered into by the head of the agency with the approved supplier as soon as possible.

Division 3 – Low value Government Contracts (Categories B and C)

34. Application of Division

This Division applies to low value Government Contracts (Categories B and C).

35. Quotations to be obtained

- (1) For a low value Government Contracts (Categories B and C), the head of the Government agency must:
 - (a) ensure the Government agency has sufficient funds available to meet the requirements of the proposed Government Contract; and
 - (b) request quotations from suppliers who have the capacity to supply the goods or services, or to execute the public works:
 - (i) for a low value Government Contract (Category B) - the head of the Government agency must request quotations from at least 3 suppliers; and
 - (ii) for a low value Government Contract (Category C) - the head of the Government agency must request quotations from at least 1 supplier.
- (2) In obtaining the quotations, the head of the agency must:
 - (a) not discriminate, particularly against potential suppliers on the basis of their location within Vanuatu; and
 - (b) ensure that potential suppliers are dealt with fairly; and
 - (c) ensure that potential suppliers are provided with all the information that are required in order to submit bids which are responsive to the needs of the Government agency.
- (3) Despite paragraphs (2)(a) and (b), special consideration is to be given to the remoteness of a location and what will be the most practical benefit to the communities in that location.
- (4) The head of the agency is not bound to accept the lowest or highest quotation, or any quotation for that matter.

- (5) To avoid doubt, an open or limited tender is not required for low value Government Contracts (Categories B and C).

36. Review of quotations

The procurement co-ordinator must:

- (a) review the quotations of a low value Government Contract (Category B and C) within 5 business days after the closing date of submitting the quotations; and
(b) prepare a written assessment of the quotations in a format approved by the Board.

37. Notification of outcome

- (1) The procurement co-ordinator must, notify in writing, the successful bidder.
(2) An unsuccessful bidder may request to be advised of the decision of the head of the Government agency.
(3) If there is no successful quotation:
(a) the head of the agency must decide whether or not to:
(i) obtain additional quotations; or
(ii) proceed with the procurement; and
(b) the procurement co-ordinator must notify all the bidders about the decision of the head of the agency

38. Contract or Purchase Order

- (1) As soon as practicable, the procurement co-ordinator must ensure that a contract is entered into between the Government agency and the successful supplier.
(2) A purchase order may be issued to the successful supplier for a low value Government Contract (Category B and C), if a Government contract requires only one payment.

Division 4 – Other matters

39. Special requirements for purchase of computers and vehicles

- (1) Despite the outcome of an open or a limited tender, or a request for quotation process:
(a) computer hardware, software and accessories are to be purchased only from the supplier authorised by the Office of the Government Chief Information Officer; and
(b) motor vehicles, other than heavy machinery that is purchased through the Board, can be made only with the prior written approval of the Fleet Management Committee of the Public Service Commission.
(2) The Director-General may issue directions or provide instructions or guidelines for the purposes of this clause, including to minimise the risk of a monopoly arising.

40. Conflict of interest

An Officer of a Government agency who has a direct or indirect interest in a procurement of goods or services, or the execution of public works must disclose, in writing, the nature of the interest to the head of the agency.

PART 5 – GOVERNMENT CONTRACTS AND OTHER PROVISIONS

41. Standard contracts to be used for Government Contracts

- (1) A Government agency must enter into a Government Contract with a supplier using the standard contract issued by the Board and approved by the State Law Office.
- (2) Despite subclause (1), a Government Contract may be entered into using alternative contract issued by the Board and approved by the State Law Office.

42. Limit on advance payments under Government Contracts

- (1) A Government agency must not enter into a Government Contract with a supplier if the Government Contract requires advance payments of more than 25% of the total value of the proposed Government Contract.
- (2) Despite subclause (1), the Board may authorised a Government agency to enter into a high value Government Contract with a supplier or the Director- General may authorise a Government agency to enter into a low value Government Contract (Category A) with a supplier, if the Board or the Director-General is satisfied that there:
 - (a) are exceptional circumstances; and
 - (b) is no alternative ways to secure essential goods, services or works.

43. Other kinds of Government Contracts

To avoid doubt, nothing in this Regulation, prevents or limits the kind of Government Contract that can be entered into.

44. Duration of Government Contracts

- (1) A high or a low value Government contract must not exceed 3 years without the prior approval of the Council.
- (2) The duration of a Government Contract may exceed 1 year:
 - (a) for high value Government Contracts - with the prior written approval of the Board; and
 - (b) for low value Government Contracts - with the prior written approval of the head of the agency,and written confirmation from the Director of the Department of Finance that funding is available for the duration of the contract.
- (3) Where a Government Contract exceeds 1 year, the Government Contract must contain provisions providing that:
 - (a) the performance of the Government Contract in the years subsequent to the first year of the Government Contract is subject to change upon the appropriation of adequate funds to meet the commitments under that Government Contract; and
 - (b) the Government Contract may be cancelled without penalty if adequate appropriations are not made for those subsequent years.
- (4) The total amount of expenditure committed by a Government agency for all Government Contracts of the agency that exceeds 1 year, must not be over 50% of the estimate of non-personnel expenditure for the Government agency in each financial year as determined by the Director-General.
- (5) A Government agency must:
 - (a) keep and maintain records of the commitments relating to Government Contracts that exceed 1 year in a format approved by the Director-General; and

- (b) make the records available to the Director-General upon the request of the Director-General.

45. Variation and extension of low value Government Contract

- (1) In deciding whether to vary or extend a low value Government Contract, the head of the Government agency must have regard to whether:
 - (a) the 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) the Government agencies has obtained a written confirmation from the Director of the Department of Finance, that funds are available to cover the variation or extension.
- (2) If the variation or extension increase the total value of the Government Contract (original cost plus variation or extension) to VT10,000,000 and above, the variation or extension must be approved by Board in accordance with subsection 3B(2) of the Act.

PART 6 – DISPOSAL OF ASSETS

46. Disposal of Government assets

- (1) Government assets are to be disposed of if they are:
 - (a) required to be disposed in accordance with a particular Government policy; or
 - (b) no longer required due to change in policies, procedures, functions or usage patterns; or
 - (c) not needed in the foreseeable future and are occupying storage space; or
 - (d) reaching the end of their economic or useful life; or
 - (e) beyond repair; or
 - (f) not suitable for an alternative use from their original use; or
 - (g) to be disposed in accordance with a Court Order.
- (2) The Director-General is to issue directions or provide instructions or guidelines for the disposal of Government assets.

47. Process of the disposal of assets

- (1) Government assets may be disposed of by an open or limited tender in accordance with the requirements of this Regulation.
- (2) Disposal of a Government asset with a high value Government Contract must be disposed of in accordance with the requirements of an open or a limited tender in special circumstances approved by the Board.
- (3) Disposal of an asset with a low value Government Contract, must be disposed of in accordance with the requirements of a low value Government Contract.

- (4) In such situations where procurement requirements may not be applicable to the disposal of assets, the directions issued or the instructions or guidelines provided by the Director-General are to deal with such matters.
- (5) An interest in land regardless of its value, including buildings or infrastructure on the land, must not be disposed without the prior written approval of the Board.
- (6) If the Board approves for an interest in land to be disposed, including buildings or infrastructure on the land, it must be independently valued less than 2 months prior to its disposal, to determine its current market value, and the valuation must be approved by the Director-General.
- (7) A Government asset with a value corresponding to low value Government Contracts (Category B) is to be disposed by auction with the prior written approval of the head of the Government agency.
- (8) A Government asset with a value corresponding to low value Government Contract (Category C) is to be disposed at a price approved by the Director-General.
- (9) For the purpose of this clause, an "interest in land" includes the issuing of any lease agreement over that land.

48. Current market value for Government assets

- (1) The head of an agency must ensure that the disposal value of any Government asset reflects the current market value of the Government assets, taking into account its current condition.
- (2) In the case where the Government asset is:
 - (a) a motor vehicle, an officer of the Ministry of Infrastructure and Public Utilities; or
 - (b) an electronic asset, the Office of the Government Chief Information Officer,must inspect and certify the market value of the Government asset before it is released to ensure best value for money.
- (3) For the purpose of paragraph (2)(a), nothing in this Regulations prevents or limits the function of the Fleet Management Committee of the Public Service Commission.

49. Conduct of disposal

The disposal of a Government asset must be conducted in an efficient, fair, transparent and accountable manner.

50. Other general provisions for disposal of Government assets

- (1) An officer of a Government agency involved in the disposal of a Government asset must make a written declaration of any perceived or conflict of interest and sign the declaration before giving it to the head of the agency.
- (2) The proceeds of the disposal of Government assets must be deposited directly into the Public Fund, except where the asset has been traded-in towards a replacement asset.
- (3) A person who intends to purchase a Government asset being disposed, must be given access to the Government asset for the purposes of viewing its condition and assessing its worth.
- (4) A person must not be given custody of the Government asset until the agreed price of the Government asset is paid in full.

51. Trade-ins on replacement assets

A trade-in price offered for purchasing a replacement asset is considered as a bid for tendering or auctioning purposes.

52. Register of disposal of Government assets

- (1) The Ministry must establish and maintain in an electronic form, a registry of the disposal of Government assets.
- (2) The head of an agency must keep and maintain an up to date record of any Government assets being disposed.

PART 7 – STATE OF EMERGENCY

53. Definitions

For the purpose of this Part, "immediate relief period" means the period determined by the Council of Ministers under clause 55.

54. Suspension of operation of this Regulation

- (1) This provision applies if a declaration of a state of emergency is in force.
- (2) The Minister may after consultation with the Prime Minister by Order, suspend in whole or in part, the operation of this Regulation during a declared state of emergency if the Minister is satisfied that it is in the national interest.
- (3) Despite subclause (2), Part 6 of this Regulation must not be suspended.

55. Emergency expenditure

An emergency expenditure during an immediate relief period as determined by the Council, is to be used in accordance with clause 56, if the Director-General is satisfied that there is extreme urgency brought about by events such as but not limited to:

- (a) natural disasters such as cyclone, flood, earthquake, tsunami, whirlwind, landside, drought and volcanic activity;
- (b) in life and death situations;
- (c) in the event of an outbreak of disease for humans, plants or animals;
- (d) if there is an urgent need for goods, services or public works and engaging in tender proceedings or obtaining quotations may be impractical due to time constraints or cost factors, and the circumstances giving rise to that urgency are not foreseeable by the procuring Government agency.

56. Immediate relief assistance

- (1) During an immediate relief period, a Director General of a ministry or a head of an agency who is given a special responsibility by the Director of the National Disaster Management Office, may procure goods, services or public works for immediate relief assistance, if the procurement is approved by the Director of the National Disaster Management Office.
- (2) Immediate relief assistance referred to in subclause (1) includes, but is not limited to, food items and access to clean and safe water, medical supplies, temporary shelter materials and needs for subsistence purposes.
- (3) As soon as practicable after the end of an immediate relief period, the Director Generals of the ministries or the head of the agencies who are given special responsibilities must submit a report to the Director-General, setting out the details of the relief assistance provided and the amounts of funds that have been used on the immediate relief assistance.

57. Ongoing relief assistance and rehabilitation

At the end of an immediate relief period, procuring Government agencies must comply with the competitive procurement procedures as set out in this Regulation when procuring goods, services or public works for ongoing relief assistance and rehabilitation purposes, subject to any Order in force under subclause 54(2).

58. Directions, instructions and guidelines

The Director-General may issue directions or provide instructions or guidelines, setting out the procedures to apply during an immediate relief period for the purchase of goods or services, or execution of public works.

59. Disaster Risk Management Act

To avoid doubt, any directions issued or instructions or guidelines provided by the Director-General under clause 58, are subject to the direction given under section 35 of the Disaster Risk Management Act No. 23 of 2019.

PART 8 – COMPLAINT PROCESS

60. Complaint

- (1) A person may make a written complaint to the Minister if he or she has suffered, or is likely to suffer, loss or injury due to a contravention or a failure by another person to comply with a requirement of this Regulation.
- (2) A complaint may be made at any stage of a procurement process.

61. Complaints for high value Government Contract

- (1) A complaint relating to a high value Government Contract must be made in writing to the Minister.
- (2) The complaint may be made at any time, but no later than 10 business days after the date of notification of the proposed award of the Government Contract.
- (3) If the complaint is not resolved or dismissed, the Minister must:
 - (a) suspend the procurement unless he or she is satisfied that urgent public interest considerations require it to proceed; and
 - (b) direct that the complaint be reviewed by an independent suitably qualified expert appointed by the Minister on the recommendation of the Board.
- (4) As soon as practicable after the expert is directed to review the complaint, he or she must investigate the complaint and take or hear submissions from all relevant parties.
- (5) The expert must review all documentation relating to the complaint and may interview any person he or she thinks can assist him or her with the review.
- (6) Following an investigation, the expert may:
 - (a) resolve or dismiss the complaint and remove the suspension; or
 - (b) uphold the complaint and require the tender to be re-advertised.
- (7) The decision of the expert must be made in writing containing the reasons for the decision.
- (8) The Minister must in writing, inform the complainant of the expert's decision within 5 business days after receiving the expert's decision.

62. Complaints for low value Government Contract (Category A)

- (1) A complaint relating to a low value Government Contract (Category A) must be made in writing to the Board.
- (2) The complaint can be made at any time, but no later than 10 business days after the date of notification of the proposed award of the Government Contract.
- (3) If the complaint is not resolved or dismissed, the Board must suspend the procurement and review the complaint as soon practicable, including to take or hear submissions from all relevant parties.
- (4) The Board must review all documentation relating to the complaint and may interview any person the Board thinks can assist the Board with the review.
- (5) Following a review, the Board may:
 - (a) resolve or dismiss the complaint and remove the suspension; or
 - (b) uphold the complaint and require the tender to be re-advertised.
- (6) The decision of the Board must be made in writing containing the reasons for the decision.
- (7) The Board must in writing inform the complainant of the Board's decision within 5 business days after its decision.

63. Complaints about disposals of Government assets

The procedures set out in clauses 61 and 62 apply to complaints made about the disposal of Government assets.

64. Grounds for resolving and dismissing complaints

- (1) A complaint can be resolved on any reasonable ground determined by the independent expert or the Board.
- (2) A complaint can be dismissed if the complaint:
 - (a) does not identify the actions or omissions done in breach of the requirements of the Act or this Regulation; or
 - (b) sets out allegations that do not state a valid basis for a complaint, or that does not set out a detailed legal and factual statement; or
 - (c) concerns contract implementation or administration; or
 - (d) in the opinion of the expert or the Board, is not reasonable.
- (3) A complaint may be resolved or dismissed before an investigation or a review is made.

65. No complaints for low value Government Contracts (Categories B and C)

There is no complaint mechanism for low value Government Contracts (Categories B and C).

PART 9 – OFFENCES AND MISCELLANEOUS

66. Offences

A person who fails to comply with a provision of this Regulation, commits an offence punishable on conviction to a fine not exceeding VT 2,000,000.

67. Record keeping requirements

- (1) A Government agency must keep an up to date record of all procurement and disposal process undertaken by the Government agency.

- (2) The record must be made available by the head of an agency to the Board, the Director-General and the Auditor-General upon request.

68. Compliance reporting

- (1) The Director-General and the Board must prepare a half-yearly report on or before 31 July and 31 January of each year, setting out any breaches of this Regulation made by Government agencies.
- (2) There must be separate reports, the Board's report for procurements or disposals for high value Government Contracts and the Director-General's report for low value Government Contracts for all other procurements and disposals.
- (3) Each report must include information regarding Government agencies or their officers who, in the preceding 6 months have:
- (a) awarded Government Contracts without conducting an appropriate tender process, quotation process or auction process; or
 - (b) divided Government Contracts into separate parts solely for the purpose of avoiding a relevant threshold; or
 - (c) used non-standard tender or contract documents without permission; or
 - (d) failed to:
 - (i) submit required documentation and reports, or to maintain appropriate records; or
 - (ii) obtain the relevant approvals required under this Regulation prior to approaching the market; or
 - (iii) check if there is sufficient fund available before publishing or giving a notice of tender; or
 - (iv) comply with the tender submission evaluation, or contracting procedures, including failing to comply with required timeframes; or
 - (e) unjustifiably or excessively used the limited tender method; or
 - (f) directly or indirectly disclose to a person any information or document in contravention of section 15B of the Act.
- (4) The reports must be submitted to the Minister, the Attorney-General, the Auditor-General and the Chairperson of the Public Service Commission as soon as practicable after they are made.
- (5) The reports must provide recommendations for follow-up actions on the reported breaches such as conducting further investigation.

69. Directions, instructions and guidelines

- (1) The Director-General may issue directions or provide instructions or guidelines for the purposes of this Regulation.
- (2) A direction issued or instruction or guidelines provided under subclause (1), must not be inconsistent with the Act and this Regulation.

70. Delegations of powers and functions of the Director-General, Director of the Department of Finance and a head of an agency

- (1) The Director-General or the Director of the Department of Finance or a head of a Government agency may delegate to an officer in a Government agency in writing, any of his or her powers or functions under this Regulation.

- (2) To avoid doubt, the power exercised and the functions performed by the officer in a Government agency under subclause (1), does not include the power to delegate.
- (3) In exercising the powers and performing the functions under subclause (1), the officer of the Government agency must comply with the directions of the Director-General or the Director of the Department of Finance or a head of an agency as the case maybe.

71. Annual procurement planning and reporting

- (1) This clause applies to high value Government Contract and low value Government Contract (Category A).
- (2) On or before 1 March of each year, a Government agency intending to undertake procurements of goods or services, or execution of public works, during that year, must submit a procurement plan to the Board for that year.
- (3) An annual procurement plan for a Government agency must contain the following information:
 - (a) details of procurement of goods, services or public works proposed to be carried out during that year; and
 - (b) the proposed methods of procurement; and
 - (c) the estimated quantity, budget and timing of each proposed purchase or group of purchases; and
 - (d) the procurement coordinator or coordinators for the Government agency; and
 - (e) the province or island for which the procurement is to occur; and
 - (f) whether it is a new policy proposal or supplementary budget support will be required; and
 - (g) such other matters as the head of the agency considers necessary.
- (4) An annual procurement plan must be approved by the Director General responsible for the procuring Government agency before being submitted to the Board.
- (5) The Director General responsible for the Government agency and the Board, must be advised of any amendment to an annual procurement plan on or before 31 March of each year.
- (6) Within 60 business days after the end of each year, a Government agency must submit a report to the Board on the actual procurements undertaken during that year and provide a comparison with the Government agency's annual procurement plan.

Table of Amendments

6	Substituted by Order 97 of 2021	56(1)	Amended by Order 97 of 2021
7	Amended by Order 97 of 2021	56(3)	Amended by Order 97 of 2021
16(3)(b)	Amended by Order 97 of 2021	71(4) and (5)	Amended by Order 97 of 2021
23(1)(b)	Amended by Order 97 of 2021	Through-out	head of a Government agency updated to head of an agency;
23(1)(c)	Repealed by Order 97 of 2021		
28	Substituted by Order 97 of 2021	Through-out	head of the Government agency updated to head of the agency
44(2)(b)	Amended by Order 97 of 2021		
44(5)(b)	Amended by Order 97 of 2021		