



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

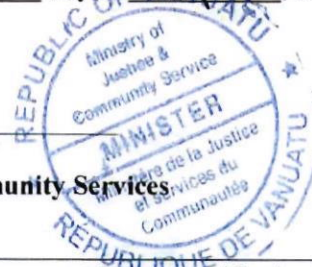
The appointed day for the coming into operation of the Government Contracts and Tenders Regulation Consolidation Edition 2021 is the day on which this Order is made.

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

ARRANGEMENT OF CLAUSES

PART 1 – PRELIMINARY

1. Application
2. Interpretation
3. Requirements of splitting Government contracts

PART 2 – PROCUREMENT METHODS

4. Procurement methods
5. Open and limited tender
6. Written quotations
7. Government Contract funded by a foreign donor

PART 3 – GENERAL TENDER REQUIREMENTS

8. Requirements of submitting a tender
9. General tender duties
10. Tenderers must be registered
11. Determination of expected value of Government Contract
12. Advertising of open tenders and notification of limited tenders
13. Request for information about tender
14. General requirements for submission of tender
15. General requirements for tender evaluation
16. Evaluation Committee
17. Evaluation committee's report
18. Debriefing for unsuccessful tenderers

**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
20. Confirmation of Board required before advertising a tender
21. Submission of tenders
22. Time for responding to notice of tender
23. Opening of tender submissions
24. Specific requirements for tender evaluation
25. Notification and contract award

**Division 2 – Low value Government Contracts
(Category A)**

26. Application of Division
27. Specific requirements for low value Government Contracts (Category A)
28. Confirmation of Director of the Department of Finance required before advertising tender
29. Submission of tenders
30. Time for responding to notice of tender
31. Opening of tender submissions
32. Specific requirements for tender evaluation
33. Notification and contract award

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

34. Application of Division

35. Quotations to be obtained
36. Review of quotations
37. Notification of outcome
38. Contract or Purchase Order

Division 4 – Other matters

39. Special requirements for purchase of computers and vehicles
40. Conflict of interest

**PART 5 – GOVERNMENT CONTRACTS AND
OTHER PROVISIONS**

41. Standard contracts to be used for Government Contracts
42. Limit on advance payments under Government Contracts
43. Other kinds of Government Contracts
44. Duration of Government Contracts
45. Variation and extension of low value Government Contract

PART 6 – DISPOSAL OF ASSETS

46. Disposal of Government assets
47. Process of the disposal of assets
48. Current market value for Government assets
49. Conduct of disposal
50. Other general provisions for disposal of Government assets
51. Trade-ins on replacement assets
52. Register of disposal of Government assets

PART 7 – STATE OF EMERGENCY

53. Definitions
54. Suspension of operation of this Regulation
55. Emergency expenditure
56. Immediate relief assistance
57. Ongoing relief assistance and rehabilitation
58. Directions, instructions and guidelines
59. Disaster Risk Management Act

PART 8 – COMPLAINT PROCESS

60. Complaint
61. Complaints for high value Government Contract
62. Complaints for low value Government Contract (Category A)
63. Complaints about disposals of Government assets
64. Grounds for resolving and dismissing complaints
65. No complaints for low value Government Contracts (Categories B and C)

PART 9 – OFFENCES AND MISCELLANEOUS

66. Offences
67. Record keeping requirements
68. Compliance reporting
69. Directions, instructions and guidelines

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- | | |
|--|---|
| 70. Delegations of powers and functions of the Director-General, Director of the Department of Finance and a head of an agency | 71. Annual procurement planning and reporting |
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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 know 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