



**FINANCIAL ADMINISTRATION AND AUDIT (AMENDMENT) BILL,
2013**

(NO. 26 OF 2010)

**A BILL FOR AN ACT TO AMEND THE FINANCIAL
ADMINISTRATION AND AUDIT ACT TO PROVIDE FOR THE
ESTABLISHMENT OF A PUBLIC PROCUREMENT DEPARTMENT
WITHIN THE MINISTRY OF FINANCE AND FOR CONNECTED
MATTERS**

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Financial Administration and Audit Act¹, may be cited as the Financial Administration and Audit (Amendment) Act, 2013.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Amendment of section 8 of the principal Act.

Section 8 of the principal Act is amended by the insertion immediately after subsection (3) of a new subsection as follows —

- “(4) The Minister may, where an enactment does not specify the frequency of payment, or provide for the imposition of a surcharge for late payment, in relation to a tax or fee imposed by such enactment —

¹(No 26 of 2010)

- (a) determine and direct the frequency of payment of the tax or fee imposed under the enactment; and
- (b) levy a surcharge for late payment of the tax or fee imposed under the enactment.”

3. Insertion of a new Part IIA into the principal Act.

The principal Act is amended by the insertion immediately after Part II of the following new Part —

“PART IIA – PUBLIC PROCUREMENT

19A. Establishment of public procurement department within Ministry of Finance.

- (1) There is established a public procurement department within the Ministry of Finance for the purposes of enhancing economy, efficiency, transparency and due process in public procurement and the management of Government resources.
- (2) The public procurement department shall —
 - (a) be under the direction of the Minister and the supervision of the Financial Secretary but, in the exercise of its functions and duties, shall operate independently of the Ministry of Finance;
 - (b) have its own budget and such structures and organisation as the Minister may determine to be necessary for the efficient performance of its functions;
 - (c) be headed by a Chief Procurement Officer, appointed by the Governor-General;
 - (d) in addition to the Chief Procurement Officer, have such other staff as is required for the efficient performance of the functions of the department.
- (3) The Chief Procurement Officer shall be responsible for the
 - (a) performance of the functions of the public procurement department;
 - (b) day to day management of the affairs of the department;
 - (c) administration, organisation and control of the staff of the department;
 - (d) management of funds, budget and other property of the department;

- (e) designation from among the department's legal staff of a debarment officer responsible for the implementation of the debarment procedure as prescribed in the regulations;
- (f) performance of such other functions as the Minister may determine.
- (4) The Chief Procurement Officer may delegate the performance and exercise of his functions, powers and duties to any public officer who reports to the Chief Procurement Officer.

19B. Functions of the public procurement department.

The functions, powers and duties of the public procurement department are to —

- (a) implement policies and standards on public procurement;
- (b) develop standard bidding and contract documents for goods, works and services to be used by procuring entities;
- (c) assess the operations of the public procurement process and submit proposals for the improvement of the processes;
- (d) develop, introduce and manage, for the procurement of works, goods and services in The Bahamas, an electronic information and procurement system including —
 - (i) electronic advertising;
 - (ii) convening and receipt of bids;
 - (iii) the development of framework agreements and contracts;
 - (iv) the use of electronic reverse auctions; and
 - (v) any and all procurement modalities leading to the optimal use of public resources;
- (e) develop and manage on behalf of Government entities a procurement system including —
 - (i) aggregation of demand;
 - (ii) calling for tenders;
 - (iii) reverse auctions;
 - (iv) management of framework contracts and electronic markets; and

- (v) procurement of goods, works and services on behalf of such entities that do not have the capacity or may not wish to procure on their own;
- (f) ensure capacity building and human resource development for public procurement including —
 - (i) developing guidelines and qualification requirements for procurement personnel; and
 - (ii) promoting and supporting training and professional development of persons engaged in public procurement;
- (g) disseminate information about and promote public awareness of the public procurement system including, in consultation with other departments, the development and periodic updating of a procurement manual for use by procuring entities;
- (h) plan and co-ordinate technical assistance in the field of public procurement;
- (i) provide for the publication through print or electronic media of information on public procurement including —
 - (i) approved Government plans;
 - (ii) proposed procurement notices; and
 - (iii) notices of invitations to bid and of procurements contracts that have been awarded;
- (j) monitor the implementation of the public procurement system and compliance with this Act and the regulations through the collection and analysis of reports provided by the procuring agencies;
- (k) issue appropriate instructions to procuring entities for the development of appropriate reporting formats and base line price indicators;
- (l) establish a website for the creation, publication, dissemination and use of procurement-related information including —
 - (i) annual departmental procurement plans;
 - (ii) procurement notices; and
 - (iii) databases for the collection and analysis of procurement reports;

- (m) develop a system for data mining in order to ascertain procurement trends, reference prices, and general information on procurement actions;
- (n) establish a mechanism for the creation of a registration and classification system for contractors, including lists of suppliers;
- (o) prepare and submit to the Minister before the 30th day of September each year an annual report on the overall functioning of the public procurement system, including a profile of procurement activities;
- (p) establish and maintain a secretariat to support the activities of the Public Procurement Board;
- (q) establish certification and professional education requirements for the staff of procuring entities;
- (r) implement the debarment procedure as prescribed in the regulations;
- (s) ensure that public procurement legislation in The Bahamas is consistent with all international treaties and obligations entered into by The Bahamas;
- (t) at the request of and in cooperation with the Ministry of National Security, prepare and maintain a list of arms, munitions, war material and equipment which are designed, developed and produced for specifically military purposes and in respect of which the application of this Part and the regulations may require modification or suspension;
- (u) establish, as appropriate, a registry for the purposes of fulfilling the functions of the registrar of the Procurement Review Tribunal in accordance with the regulations; and
- (u) perform such other functions as are necessary, incidental or conducive to the fulfilment of the department's function to provide centralized oversight of the public procurement system in The Bahamas.

19C. Public Procurement Board.

- (1) The Government Tenders Board established under section 56 of the Financial Regulations² is preserved and continues in existence for the purposes of this Act under the new name of the Public Procurement Board.

²Sub. Leg., Vol. VI, (Ch. 359-5)

- (2) The constitution, functions and powers of the Public Procurement Board shall be as prescribed by the regulations.

19D. Procuring entities.

- (1) Procurement shall be conducted by procuring entities in a fair, equitable and transparent manner using competitive open bidding procedures —
- (a) based on the application of objective and non-discriminatory technical specifications, selection and award criteria;
 - (b) with a view to providing the Government with value for money goods, works and services, by the most timely, cost-effective and efficient means possible; and
 - (c) in accordance with the regulations.
- (2) A potential or actual bidder who is aggrieved by an act or omission of a procuring entity may, at any stage of the procurement proceedings, request a review in accordance with the complaints review procedure prescribed by the regulations.
- (3) Procuring entities and their functions, powers and duties shall be as prescribed by the public procurement regulations.

19E. Procurement units.

- (1) A procurement unit shall be established in each procuring entity to carry out procurement activities for the entity.
- (2) The head of the procuring entity shall determine the size, location, and structure of the procurement unit having regard to its procurement requirements and the availability of trained and experienced staff.
- (3) The head of the procuring entity may —
- (a) where such person determines that the level of procurement activity does not justify the creation of a procurement unit, nominate a single public officer to carry out the functions of a procurement unit or request procurement to be carried out on the entity's behalf by the public procurement department; or
 - (b) where such person determines that there is insufficient procurement capacity within the procurement unit, request that procurement be carried out by the public procurement department on behalf of the procuring entity.
- (4) A procurement unit which pursuant to subsection (3) directly purchases works, supplies or services from or through the

public procurement department shall be deemed to have complied with this Part and the regulations to the extent that the public procurement department has complied with them.

- (5) The functions, powers and duties of a procuring unit shall be as prescribed by the regulations.

19F. Minister to lay annual report.

The Minister shall by the 1st day of October of each year cause the annual report of the public procurement department to be laid before both chambers of Parliament together with the Minister's assessment of the work of the department for the relevant financial year.

19G. Procurement Review Tribunal.

- (1) There is established for the purposes of this Part a tribunal to be known as the Procurement Review Tribunal.
- (2) The Procurement Review Tribunal shall —
- (a) be an independent, *ad hoc* tribunal;
 - (b) exercise its functions, when required, by panels constituted in accordance with the regulations;
 - (c) have an official seal that shall be judicially noticed;
 - (d) consist of the President and such other members as may be prescribed by the regulations; and
 - (e) develop its own rules of procedure.
- (3) The Tribunal shall have exclusive jurisdiction to hear and determine all appeals, matters and disputes referred to it under this Act or the regulations or conferred upon it by any other law.
- (4) An appeal from a decision of the Tribunal shall lie to the Supreme Court.

19H. Regulations.

The Minister may make regulations —

- (a) providing for the application, modification or suspension of the provisions of this Part;
- (b) prescribing the membership, functions and powers of the Public Procurement Board;
- (c) prescribing procurement entities and their functions, powers and duties;
- (d) prescribing the functions, powers and duties of a procuring unit;

- (e) providing for the constitution of the Procurement Review Tribunal and the appointment of its members;
- (f) prescribing the procedures for complaints and appeals to the Procurement Review Tribunal and from the Tribunal to the Supreme Court; and
- (g) providing for any other matter necessary or conducive to giving effect to the provisions of this Part.”

4. Amendment of section 25 of the principal Act.

Section 25 of the principal Act is amended by the insertion —

- (a) immediately before the existing provision, of the subsection designation “(1)”; and
- (b) immediately after subsection (1), of the following new subsections —

- “(2) The Minister may make specific regulations for the removal from the General Ledger of dormant book accounts of the Government and the writing off in whole or in part of a debt or obligation due to the Government or a claim made by the Government including, without restricting the generality of the foregoing, regulations prescribing the —
 - (a) criteria for determining whether a dormant account should be removed or a debt, obligation or claim written off;
 - (b) requirements to be met and procedures followed before a dormant account may be removed or a debt, obligation or claim written off; and
 - (c) information and records to be kept in respect of a dormant account that is removed or a debt, obligation or claim that is written off.
- (3) A debt, obligation or claim written off during a fiscal year shall be included in the Treasury accounts for such year in such form as the Minister may prescribe by regulations.”

5. Repeal of section 26 of the principal Act.

Section 26 of the principal Act is repealed.

6. Amendment of section 32 of the principal Act.

Section 32 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the word “three” and the substitution of the word “four”; and

- (b) in subsection (4), by the deletion of the word “two” and the substitution of the word “three”.

OBJECTS AND REASONS

The purpose of the Bill is to establish a public procurement department within the Ministry of Finance to govern the conduct of Government procurements.

Clause 1 provides for the Minister to appoint a date for the amendment to come into force.

Clause 2 amends section 8 of the principal Act to empower the Minister to determine the frequency of payment, and to impose a surcharge for late payment, of a tax or fee imposed under an enactment which is silent in relation to such frequency or surcharge.

Clause 3 inserts a new Part IIA, sections 19A to 19H, into the principal Act to provide as follows:

Section 19A provides for the establishment of a public procurement department within the Ministry of Finance which shall, in the exercise of its functions and duties, operate independently of the Minister of Finance.

Section 19B provides for the functions of the public procurement department.

Section 19C provides for the continuation of the Government Tenders Board as the Public Procurement Board.

Clause 19D provides for procuring entities to conduct procurement in a fair, equitable and transparent manner using competitive open bidding procedures.

Clause 19E provides for the establishment in each procuring entity of a procuring unit to carry out procurement activities for the entity.

Clause 19F provides for the laying of the annual report of the public procurement department by the Minister before both chambers of Parliament.

Clause 19G provides for the establishment of an independent, ad hoc Procurement Review Tribunal and the functions of the Tribunal.

Clause 19H empowers the Minister to make regulations to give effect to the provisions of the new Part IIA of the principal Act.

Clause 4 amends section 25 of the principal Act to empower the Minister to make specific regulations for the removal from the General Ledger of dormant book accounts of the Government and the writing off of debt, obligations and claims and to mandate that write-offs in a fiscal year shall be included in the Treasury Accounts for such year.

Clause 5 repeals section 26 of the principal Act.

Clause 6 amends section 32 of the principal Act to extend the time periods for submission to the Financial Secretary of statements of accounts by the Treasurer and of written reports by principal accounting officers.