

**SAINT VINCENT AND THE GRENADINES
PROCUREMENT AND CONTRACT ADMINISTRATION BILL, 2007
ARRANGEMENT OF SECTIONS**

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SAINT VINCENT AND THE GRENADINES

BILL NO. OF 2007

I ASSENT

[L.S.]

AN ACT to provide for the general requirements in relation to procurement, ~~[to]for the~~ exempt and partially exempt procurement, ~~[to] for~~ the establishment of the procurement authorities, ~~[to]for the~~ solicitation procedures, ~~[to] for~~ the administration of contracts, for the suspension and debarment of tenderer or offerer, for the assessment of procurement and contract administration, for the sanctions, for the review process, for the power to make regulations, for transitional matters and consequential amendments and to provide for matters connected therewith and incidental thereto.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:-

PART I

PRELIMINARY

Citation

1. This Act may be cited as the Procurement and Contract Administration Act, 2006 and shall come into operation on such date appointed by the Governor-General by notice published in the *Gazette*.

Interpretation

2. (1) In this Act—

“Central Procurement Unit” means the Central Procurement Unit established under section 18;

“centralized procurement” means the procurement of—

- (a) building materials on the building materials list kept by the department responsible for public works;
- (b) stationery and office supplies on the stationery and office supplies list kept by the Ministry of Finance;
- (c) drugs, medical supplies and equipment on the list of drugs, medical supplies and equipment kept by the Ministry of Health;
- (d) computers and related equipment on the list of computers and related equipment kept by the Department of Finance;
- (e) office furniture and equipment on the list of office furniture and equipment kept by the Department of Finance; or
- (f) vehicles and related equipment on the list of vehicles and related equipment kept by the Department of Finance;

“Chief Procurement Officer” means the senior financial officer designated as such under section 19;

“construction” means the construction, reconstruction, erection, installation, repair, renovation, extension or demolition of a building, structure or works and includes services such as mapping, drilling, soil testing, site preparation, excavation, demolition, maintenance and other similar activities furnished in connection therewith if the value does not exceed the value of the construction, reconstruction, erection, installation, repair, renovation or extension of the building, structure or works;

“contract” means a formal agreement, a petty agreement or an agreement evidenced by the issue of a purchase order;¹

“contractor” means a person having a procurement contract with the Government;

¹ There are various ways that entering into a contract can be evidenced. The simplest is the issue of a purchase order. That is the usual means for purchases by oral or written quotations. For larger contracts there is usually a written contract that is formally executed. The reason for this is often to ensure that, in addition to executing the contract, the performance security is furnished. Let's discuss.

“Departmental Procurement Board” means a Departmental Procurement Board established under section 29;

“Director General” includes any public officer acting for him;

“dollar” or “\$” means EC dollar;

“employee” means a person who is a public officer of, or has a contract of employment with, the Government;

“formal agreement” means an agreement between the Government and another person in the form approved by the Minister as a formal agreement under section 8:

“goods” means tangible personal property and includes services incidental to the supply of goods if the value of those services does not exceed the value of the goods;

“Government” means the Government of Saint Vincent and the Grenadines;

“invitation to tender” means the documents, whether attached or incorporated by reference, used in soliciting tenders;

“list of pre-qualified small suppliers” means the list referred to in section 24(4);

“offeror” means a person who submits a proposal;

“permanent secretary” includes any public officer acting for him;

“person” means a corporation, association, individual, sole proprietorship, partnership or joint venture and includes the assigns and heirs, executors and administrators or other legal representatives of the person;

“petty agreement” means an agreement between the Government and another person in the form approved by the Minister as a petty agreement under section 8:

“procurement” means all activities that pertain to the solicitation and entering into a contract by the Government for the supply of goods, the rendering of services or for construction by an independent contractor;

“Procurement Board” means the Procurement Board established under section 21;

“procurement authority” means—

- (a) the Procurement Board;
- (b) a Departmental Procurement Board; or
- (c) the accounting officer of a department with respect to a small procurement by the department;

“procuring entity” means a department of the Government, including a non-ministerial department, a Ministry or another service for which a procurement is made;

“procurement documents file” means the file referred to in section 26(3);

“procurement officer”, in relation to a procurement, means the person appointed under section 26 in relation to that procurement and includes any person authorised to act of his behalf;

“purchase” includes rent, lease or otherwise acquire;

“qualified”, in relation to a person who submits a tender or offeror, person making a submission in relation to an emergency procurement or a person submitting a quotation means that the person has the capability and reliability, legal capacity and integrity to perform the contract and is in good standing with the Government;

“request for quotations” means all documents, whether attached or incorporated by reference, used in soliciting quotations;

“request for proposals” means all documents, whether attached or incorporated by reference, used in soliciting proposals;

“responsive”, in relation to a tender, proposal or quotation, means compliant in all material respects with the requirements of the invitation to tender, request for proposals or request for quotations;²

“Secretary” means the secretary of the Procurement Board appointed under section 25;

“services” means an object of procurement and includes the supply of—

- (a) professional services or other labour, time or effort and includes, reports, goods, products or other tangible property produced or supplied incidental to the rendering of the services if the value of those goods does not exceed the value of the services;
- (b) subject to section 10(1)(c), the supply of electricity, telecommunications, water and other similar services; or
- (c) insurance coverage and other similar services,

but does not include engaging an employee;

“small procurement” means a procurement referred to in Part V;

“tenderer” means a person who submits a tender.

⁷ Same as 6.

(2) Unless the context otherwise requires, the cognates and grammatical forms of a word or phrase have the same meaning as the word or phrase.

Application of Finance Regulations, 2006

3. The Finance Regulations, 2006, and more particularly sections 2, 3 and 4, apply to this Act with such modifications as the circumstances require.

Purposes

4. The purposes of this Act are—

- (a) to simplify, clarify and modernize procurement by the Government;
- (b) to provide for increased public confidence in the procurement procedures followed by the Government;
- (c) to ensure fair and equitable treatment of all persons who deal with the procurement system of the Government;
- (d) to provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the money of the Government; and
- (e) to provide safeguards for the maintenance of a procurement system of quality, integrity and transparency.

PART II

GENERAL PROCUREMENT REQUIREMENTS

General procurement requirements

5. All procurements shall be made in accordance with this Act and the Regulations made under this Act.

Requirement of estimate and commitment of sufficient funds before solicitation

6. Before commencing a solicitation for a procurement, the procurement authority shall—

- (a) enquire if its requirements can be met by the transferring of goods from another department;
- (b) ensure that no procurement is made in excess of its requirements;
- (c) ensure that an accurate estimate of the costs of the procurement including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement has been prepared; and

- (d) commit the amount of the estimate in accordance with section 23(1)(a) of the Finance Regulations, 2006

Artificial division of procurement

7. No procurement shall be artificially divided so as to be procured as a small procurement.

Form of agreements

8. (1) This section applies only in relation to procurements to extent that they are not exempted under Part III.

(2) The Minister may prescribe by regulation—

(a) the use of forms for formal agreements, petty agreements and purchase orders for construction, for the supply of goods and the rendering of services or for any class of construction, supply of goods and rendering of services; and

(b) financial limits within which those forms shall or may be used.

(3) The Minister may approve different forms of formal agreements and petty agreements for construction, for the supply of goods and the rendering of services or for any class of construction, supply of goods and rendering of services.

Execution of agreements

9. (1) A formal agreement or a petty agreement in relation to a contract awarded by the Procurement Board shall be executed on behalf of the Government by the accounting officer of the procuring entity.

(2) A formal agreement or a petty agreement in relation to a contract award by a Departmental Procurement Board shall be executed on behalf of the Government by the accounting officer of the procuring entity.

(3) A petty agreement in relation to contract award for small procurement shall be executed by the accounting officer of the procuring entity.

PART III

EXEMPT AND PARTIALLY EXEMPT PROCUREMENTS

Procurements exempted from Part V

10. (1) The following procurements are exempted from Part V—

(a) a procurement of the professional services by a health professional or a lawyer;

(b) the acquisition of a work of art or object of historical or cultural interest;

(c) the supply of electricity, telecommunications, water or other similar services by a supplier that has a monopoly on the supply of those services.

(2) A contract for a procurement referred to in subsection (1)(a) or (b) may be negotiated, be in the form required, be entered into, and be executed, on behalf of the Government by the minister responsible for the procurement.³

(3) A contract for a procurement referred to in subsection (1)(c) may be negotiated and entered into by the Minister of Finance.

Procurements that may be exempted from Part V

11. (1) The minister responsible for the procurement of any of the following services may make an order exempting the procurement from Part V—

(a) accountants;

(b) architects;

(c) engineers;

(d) surveyors.

(2) A contract for a procurement that is exempted by order under section (1) may be negotiated, be in the form required, be entered into, and be executed, on behalf of the Government by the minister responsible for the procurement.

Notice by accounting officer

12. (1) Without delay after a contract referred to in section 9 or 10 is entered into, the accounting officer of the ministry responsible for the procurement shall give written notice to the Secretary setting out—

(a) the name and address of the contractor;

(b) particulars of the nature of the procurement and its terms and conditions;

(c) the date and amount of the contract;

(d) the basis on which the procurement is exempted.

(2) Paragraph (1)(b) may be satisfied by attaching a copy of the contract.

³ Are subsections (2) and (3) accurate? They could be left out and you could rely on the uncertainties of the common law to determine who has authority to enter in to these contracts.

Contracts involving national defence or national security wholly or partly exempted from Part V

13. (1) If he is of the opinion that it is in the national interest to do so after consulting with the Procurement Board, the minister responsible for national security may make an order—

- (a) wholly or partly exempting any procurement involving national defence or national security from Part V; and
- (b) requiring the procurement to be kept confidential.

(2) An order under subsection (1) shall exempt a procurement from Part V to the minimum extent necessary to protect the national interest and, when the exemption is partial, shall specify the extent of the exemption.

(3) The procurement shall be made and the contract shall be entered into, be in the form and be executed on behalf of the Government in accordance with Part V except to the extent that it is exempted by an order under subsection (1).

(4) An order under subsection (1) shall be sent without delay to the Secretary.

(5) When an order under subparagraph (1)(b) provides that the procurement be kept confidential, no person shall disclose any information or document about the procurement—

- (a) to any public officer inside Government except to a person who needs to have that information or documentation to perform his functions; or
- (b) outside government except when required to do so under an Act or when the minister responsible for national security so authorises in writing.

Procurements under co-operative purchasing agreements exempted from Part V

14. (1) Under section 5(3)(d) of the Act, the Minister of Finance may enter into a co-operative procurement agreement for the procurement of goods or services with any one or more of the following—

- (a) a government outside Saint Vincent and the Grenadines;
- (b) a statutory body or public authority inside or outside Saint Vincent and the Grenadines;
- (c) the Eastern Caribbean Central Bank or any regional organization in the Caribbean;

(2) The Minister of Finance may vary or cancel a co-operative procurement agreement.

(3) A copy of an agreement made under subsection (1) or an agreement to vary or cancel a co-operative procurement agreement shall be filed with the Secretary without delay after it is made.

(4) Procurements under a co-operative procurement agreement are exempted from Part V.

Donor-funded procurements that are partially exempted from Part V

15. (1) When the funding for a procurement or part of the funding for a procurement is provided by a donor to the Government on the condition or on the understanding that the procurement procedures of the donor, or procurement procedures approved or agreed to, by the donor will be used, the procurement is exempted from this Act to the minimum extent necessary to give effect to the condition or understanding.

(2) The accounting officer for the ministry responsible for the procurement shall send to the Procurement Board a statement setting out the condition or understanding relevant to the procurement.

(3) The procurement shall be made and the contract shall be entered into, be in the form and be executed on behalf of the Government in accordance with Part V except as modified by the condition or understanding.

Exempted procurements files

16. The Secretary shall, for each financial year, maintain the following exempted procurements files—

- (a) a file for procurements referred to in section 10 and 11 (procurements exempted from Part V) in which notices referred to in section 12 shall be filed;
- (b) a file for procurements referred to in section 13 (contracts involving national defence or national security exempted from Part V) in which orders referred to in section 13(1) wholly exempting the procurement shall be filed;
- (c) a file of co-operative procurements agreements referred to in section 14(1) in which agreements and variations and cancellations referred to in section 14 shall be filed.

Filing when contract partially exempted

17. When—

- (a) a procurement referred to in section 13 (contracts involving national defence or national security exempted from Part V), the order partially exempting the procurement shall be filed in the procurement documents file for that procurement; and

- (b) a procurement referred to in section 15 (donor funded procurements that are partially exempted from Part V) is made, the statements referred to in section 15(2) shall be filed in the procurement documents file for that procurement.

PART IV

PROCUREMENT AUTHORITIES

Central Procurement Unit established

18. There shall be a Central Procurement Unit within the Ministry of Finance which shall be under the supervision of a Chief Procurement Officer.

Chief Procurement Officer

19. The Minister shall designate a senior financial officer within the Ministry of Finance as Chief Procurement Officer.

Responsibilities and powers of the Chief Procurement Officer

- 20.** (1) The Chief Procurement Officer shall be responsible for the following—
- (a) assisting the procurement authorities in relation to the procurement system of Saint Vincent and the Grenadines;
 - (b) providing monitoring of public procurement;
 - (c) providing procurement information and managing statistical data bases;
 - (d) developing and supporting implementation of initiatives for improvements of the public procurement system;
 - (e) providing implementing tools and documents to support training and capacity development of procurement authorities and of any public officers involved in the procurement system;
 - (f) enquiring and reporting on procurement and contract administration having regard to the issues and problems that have arisen or are likely to arise, including those identified in the Report of the Director of Audit for the previous financial year, if any, and setting out the cost and other measures necessary to address those issues and problems;
 - (g) subject to the approval of the Minister, developing policies and guidelines with respect to the application of the Act or the Regulations.
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(2) Any report prepared pursuant to paragraph (1)(f) shall be sent to the Minister who shall, not later than seven days after the House of Representatives first meets after he has received the report, lay it before the House.

(3) The Minister who, after such consultations as appear to him to be appropriate, shall determine what action shall be taken in relation to the report.

(4) For the purpose of enquiring and reporting on procurement and contract administration pursuant to subsection (1)(f), the Chief Procurement Officer

(a) shall at all times have access to all procuring entity or places where procurement activities take place; and

(b) may require any public officer to furnish any information and provide access to any documents that the Chief Procurement Officer considers necessary for the purpose of enquiring and reporting .

Procurement Board established

21. (1) There is hereby established a Procurement Board consisting of—

(a) the following *ex officio* members—

(i) the Director General;

(ii) the Permanent Secretary of the ministry responsible for public works;

(iii) the Permanent Secretary of the ministry responsible for trade;

(iv) the Accountant General; and

(b) at least 3 other public officers appointed by the Minister of Finance.

(2) The members referred to in paragraph (1)(b) may be appointed for such terms as he considers appropriate or *ex officio* and, when a member is appointed *ex officio*, any person acting in his office is a member.

(3) The Procurement Board is deemed to be properly constituted notwithstanding that there is a vacancy on the Procurement Board or defect in the appointment of a member.

(4) A previous appointment as an appointed member does not affect a person's eligibility to be reappointed as a member.

Chairperson and deputy chairperson

22. (1) The Director General is Chairperson of the Board.

(2) The Minister [the Chairperson (please advise)] may designate a member referred to in section 20(1)(a) to be deputy chairperson.

(3) In the absence of the Chairperson, if no one has been designated as deputy chairperson under subsection (2), the members may select a deputy chairperson from among themselves.

(4) The deputy chairperson shall, in the absence of the Chairperson, exercise his powers.

(5) In the event of a tie vote, the Chairperson has a second or casting vote.

Quorum

23. A quorum of the Procurement Board is majority of the members.

Responsibilities and powers of Procurement Board

24. (1) The Procurement Board has sole responsibility for making—

- (a) centralized procurements irrespective of value; and
- (b) procurements of the amount prescribed by regulation or more,

other than those procurements delegated to a departmental procurement board.

(2) The Procurement Board has the authority set out in Part VII over the administration of contracts arising from the procurements referred to in subsection (1).

(3) The Procurement Board has authority to suspend or debar a person under Part VIII.

(4) The Procurement Board shall make and maintain a list, to be called the “list of pre-qualified small suppliers”, of persons who are considered responsible for the purposes of soliciting requests for quotations for goods, services or construction or classes of goods, services or construction.

(5) No persons name shall be placed on the pre-qualified small suppliers list or remain on such list unless that person is qualified in relation to procurements that are less than the limit for small procurements prescribed by regulation or any other amount determined from time to time by the Procurement Board.

(6) The pre-qualification process prescribed by regulation applies to the placing on or removal from the list referred to in subsection (4).

(7) The Procurement Board may make rules governing its procedure.

Secretary of Procurement Board

25. (1) The Minister shall appoint a Secretary to the Procurement Board, who shall, in addition to the responsibilities assigned to him under this Act, provide administrative support to the Board and more particularly—

- (a) give notice of meetings of the Board;
- (b) take accurate minutes of meetings of the Board and providing copies to members of the Board and to affected procurement officers;
- (c) keep records of the business of the Board;
- (d) prepare the correspondence of the Board;
- (e) carry out such other tasks in relation to procurement as are assigned to him by the Board.

(2) The secretary shall keep an up-to-date list of pre-qualified small suppliers from whom requests for quotations may be solicited and shall disseminate make the list available to procurement officers.

Appointment of procurement officer and his responsibilities

26. (1) The Procurement Board shall, with the approval of the appropriate accounting officer, appoint a public officer as the procurement officer for each procurement referred to in section 24(1).

(2) The procurement officer shall maintain an accurate and up-to-date record of procurement information for each procurement in respect of which he is appointed procurement officer, which shall contain—

- (a) the file number in which the procurement documents are located;
- (b) the estimate of the cost of the procurement and a statement of the money available or likely to be available to cover the cost of the contracts and contingencies that might reasonably be expected to arise under the contract;
- (c) particulars of where the cost of the contract were charged at the time of award;
- (d) the contract number;
- (e) the name of the contractor;
- (f) the names of the officers of the contractor who signed the contract;
- (g) the original amount of the contract;

- (h) particulars of the performance security furnished by the contractor;
- (i) the amount, if any, of the contract amount that is retained as security and the period that it is retained; and
- (j) the date of commencement of the contract and the date of completion;
- (k) particulars of any variation in the contract, progress payments, final payment, change orders, penalties deducted and other similar information.

(3) The procurement officer shall maintain an accurate and up-to-date procurement documents file for each procurement in respect of which he is appointed procurement officer, in which shall be placed all documents referred to in this Act or the Regulations.

Authority of Chairperson to act on behalf of the Board

27. (1) When a matter that requires a decision of the Board cannot without causing substantial prejudice to the Government await the next meeting of the Board, the Chairperson may, after such consultations with other members of the Board as are reasonable in the circumstances, make the decision on behalf of the Board.

(2) The decision and a summary of the consultations by the Chairperson shall be reported to the Board and recorded in the minutes.

Committees

28. (1) The Procurement Board may appoint such committees either generally or with respect to a specific procurement to furnish advice to, or to discharge a specified responsibility of, the Procurement Board.

(2) A committee may consist of members of the Procurement Board, public officers not members of the Procurement Board, or both members and non-members.

Delegation to departmental procurement board

29. (1) At the request of the accounting officer for a department, the Procurement Board may establish a Departmental Procurement Board for that department consisting of such public officers in that department as may be appointed by the Procurement Board.

(2) The Procurement Board shall appoint a person approved by the accounting officer as secretary to the Departmental Procurement Board.

(3) The Procurement Board may delegate to the Departmental Procurement Board, procurements for the purposes of the department, which may include a centralized procurement if the department is the department responsible for that procurement.

(4) The Procurement Board may give such directions to the Departmental Procurement Board with regard to carrying out its responsibilities and exercise of its powers as the Procurement Board considers appropriate.

(5) Subject to the directions referred to in subsection (4)—

- (a) the Departmental Procurement Board has, in relation to a procurement delegated to it, all the responsibilities and powers of the Procurement Board, except that it is not permitted to further delegate the authority, unless the Procurement Board so permits, in which event the delegate may further delegate the authority in accordance with the permission; and
- (b) the secretary of the Departmental Procurement Board, in relation to procurements delegated to the Board, has the responsibilities of the Secretary under section 25.

Procurement authority for small procurements

30. The procurement authority for a small procurement is the accounting officer of the department making the small procurement.

Appointment of procurement officer for small procurements

31. The accounting officer shall appoint a public officer in his department as the procurement officer for small procurements or a class of small procurements.

PART V

SELECTION PROCEDURES

Conditions of use

32. (1) A procurement shall be made by one of the following forms of solicitation—

- (a) by competitive sealed tendering;
- (b) by competitive sealed proposals
- (c) as a sole source procurement;
- (d) as an emergency procurement; or
- (e) as a small procurement.

Competitive sealed tendering

33. (1) A procurement shall be made by competitive sealed tendering as prescribed by regulation unless the procurement may be done by one of the forms of solicitation referred to in paragraph 31(1)(b) to (e).

(2) The procurement of research, experiment, study or development services, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs, may be solicited by competitive sealed tendering as prescribed by regulation or negotiated, be in

the form required, be entered into, and be executed, on behalf of the Government by the minister responsible for the procurement.

Competitive sealed proposal

34. (1) A procurement may be made by competitive sealed proposals as prescribed by regulation when the Procurement Board decides that it is not practicable or advantageous to make the procurement by competitive sealed tendering

(2) Whether a competitive sealed proposal is practicable relates to such factual circumstances as whether there is sufficient time or information to prepare an invitation to tender.

(3) Whether a competitive sealed proposal is advantageous relates to such matters as whether quality, availability or capability is overriding in relation to price.

(4) The procurement officer shall file a copy of the decision of the Procurement Board in the procurement documents file.

Multi-step competitive sealed proposal

34. When the Procurement Board considers that it is impracticable under subsection 34(2) to prepare a description of what is being procured, a request for unpriced proposals as prescribed by regulation may be issued requesting the submission of unpriced offers to be followed by a request for proposals limited to those offerors whose proposals meet the evaluation criteria set forth in the request for unpriced proposals.

Sole source procurement

36. (1) A procurement may be made as a sole source procurement as prescribed by regulation when the Procurement Board determines that there is only one source for the supply of goods, services or construction.

(2) The procurement officer shall

(a) make a record of the basis of the Procurement Board's determination that there is only one source of supply; and

(b) file a copy of the contract in the procurement documents file.

Emergency procurement

37. Notwithstanding any other provision of this Act, a procurement may be made as an emergency procurement as prescribed by regulation when the Public Procurement Board determines that there exists a threat to public health, welfare or safety by reason of an emergency.

Small procurement

38. Subject to sections 36 and 37, a procurement that is less than the prescribed amount may be made in accordance with the small procurement procedures as prescribed by regulation.

PART VI**REVIEW****Right to review**

39. (1) Subject to subsection (2), any supplier or contractor that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procurement authority by this Act or the regulations may seek review in accordance with this Part.

(2) The following shall not be subject to the review provided for in subsection (1):

- (a) the selection of a solicitation procedure pursuant to sections 33, 34, 35, 36, 37 and 38; and
- (b) a decision of a procurement authority to reject all tenders, proposals, offers or quotations.

Right by procurement authority

40. (1) Unless the procurement contract has already entered into force, a complaint shall, in the first instance, be submitted in writing to the head of the procurement authority.

(2) The head of the procurement authority shall not entertain a complaint, unless it was submitted within 20 days of when the supplier or contractor submitting it became aware of the circumstances giving rise to the complaint or of when that supplier or contractor should have become aware of those circumstances, whichever is earlier.

(3) The head of the procurement authority need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force.

(4) Unless the complaint is resolved by mutual agreement of the supplier or contractor that submitted it and the procurement authority, the head of the procurement authority shall, within 30 days after the submission of the complaint, issue a written decision. The decision shall:

- (a) state the reasons for the decision; and
- (b) if the complaint is upheld in whole or in part, indicate the corrective measures that are to be taken.

(5) If the head of the procurement authority does not issue a decision by the time specified in subsection (4), the supplier or contractor submitting the complaint is entitled immediately thereafter to institute proceedings under section 41 or 45. Upon the

institution of such proceedings, the competence of the head of the procurement authority to entertain the complaint ceases.

(6) The decision of the head of the procurement authority shall be final unless proceedings are instituted under section 41 or 45.

Administrative review

41. (1) A supplier or contractor entitled under section 39 to seek review may submit a complaint to the Administrative Review Board established under section 42:

- (a) if the complaint cannot be submitted or entertained under section 40 because of the entry into force of the procurement contract, and provided that the intention to submit a complaint is notified to the Director General [to be confirmed] within 20 days after the earlier of the time when the supplier or contractor bringing it became aware of the circumstances giving rise to the complaint or the time when that supplier or contractor should have become aware of those circumstances;
- (b) if the head of the procurement authority does not entertain the complaint because the procurement contract has entered into force, provided that the intention to submit a complaint is notified to the Director General [to be confirmed] within 20 days after the issuance of the decision not to entertain the complaint;
- (c) pursuant to subsection 40(5), provided that the intention to submit a complaint is notified to the Director General [to be confirmed] within 20 days after the expiry of the period referred to in subsection 40(4); or
- (d) if the supplier or contractor claims to be adversely affected by a decision of the head of the procurement authority under section 40, provided that the intention to submit a complaint is notified to the Director General [to be confirmed] within 20 days after the issuance of the decision.

(2) Upon receipt of a complaint, the Administrative Review Board shall give notice of the complaint promptly to the procurement authority.

(3) The Administrative Review Board, after making or causing to be made such investigation as it thinks necessary, may grant one or more of the following remedies, unless it dismisses the complaint:

- (a) declare the legal rules or principles that govern the subject-matter of the complaint;
- (b) prohibit the procurement authority from acting or deciding unlawfully or from following an unlawful procedure;
- (c) require the procurement authority that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;

- (d) annul in whole or in part an unlawful act or decision of the procurement authority, other than any act or decision bringing the procurement contract into force;
- (e) revise an unlawful decision by the procurement authority or substitute its own decision for such a decision, other than any decision bringing the procurement contract into force;
- (f) require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting the complaint in connection with the procurement proceedings as a result of an unlawful act or decision of, or procedure followed by, the procurement authority;
- (g) order that the procurement proceedings be terminated.

(4) The Administrative Appeal Board shall determine its own procedure, but shall give full opportunity to the parties to present evidence and make representations.

(5) Without restricting the generality of subsections (3) and (4), the Administrative Review Board may by a notice require any person

- (a) to attend before the Board to give evidence under oath or, where permitted by law, on affirmation with respect to any matter related to the examination; and
- (b) to produce any records respecting the matter referred to in the notice.

(6) If a person fails or refuses to comply with a notice under subsection (5), the High Court, on the application of the Administrative Review Board, may issue an order requiring the person to attend before the Administrative Review Board in compliance with the notice.

(7) If a witness refuses

- (a) to give evidence in compliance with a notice under subsection (5);
- (b) to answer any questions before the Administrative Review Board pursuant to the notice; or
- (c) to produce any records referred to in the notice,

the High Court may commit the witness for contempt in accordance with the rules of the Eastern Caribbean Supreme Court Civil Procedure Rules or any other law.

(8) The Administrative Review Board shall within 30 days issue a written decision concerning the complaint, stating the reasons for the decision and the remedies granted, if any.

(9) The decision shall be final unless an action is commenced under section 45.

Administrative Review Board

42. (1) Upon being notified of the intention to submit a complaint pursuant to section 41, the Director General [to be confirmed] shall without delay cause to be constituted an *ad hoc* Administrative Review Board.

(2) The intention to submit a complaint shall be accompanied by a copy of the complaint which shall be transmitted to the Administrative Review Board upon its constitution.

(3) The Administrative Review Board shall consist of three members appointed by the Minister.

(4) The Minister shall select members of the Administrative Review Board among persons declared apt to be appointed to such Board according to the recruiting and selection procedure established by regulation.

(5) The names of the persons declared apt shall be recorded in a register kept at the Ministry of Finance.

Certain rules applicable to review proceedings under sections 40 and 41

43. (1) Promptly after the submission of a complaint under section 40 or 41, the head of the procurement authority, or the Administrative Review Board, as the case may be, shall notify all suppliers or contractors participating in the procurement proceedings to which the complaint relates of the submission of the complaint and of its substance.

(2) Any such supplier or contractor or any governmental authority whose interests are or could be affected by the review proceedings has a right to participate in the review proceedings. A supplier or contractor that fails to participate in the review proceedings is barred from subsequently making the same type of claim.

(3) A copy of the decision of the head of the procurement authority, or of the Administrative Review Board, as the case may be, shall be furnished within five days after the issuance of the decision to the supplier or contractor submitting the complaint, to the procurement authority and to any other supplier or contractor or governmental authority that has participated in the review proceedings. In addition, after the decision has been issued, the complaint and the decision shall be promptly made available for inspection by the general public, provided, however, that no information shall be disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Suspension of procurement proceedings

44. (1) The timely submission of a complaint under section 40 or the timely notification of an intention to complain under section 41 suspends the procurement proceedings for a period of seven days, provided that the complaint is not frivolous and contains a declaration the contents of which, if proven, demonstrate that the supplier or contractor will suffer irreparable injury in the absence of a suspension, it is probable that the complaint will succeed and the granting of the suspension would not cause disproportionate harm to the procurement authority or to other suppliers or contractors.

(2) When the procurement contract enters into force, the timely notification of an intention to complain under section 41 shall suspend performance of the procurement contract for a period of seven days, provided the complaint meets the requirements set forth in subsection (1).

(3) The head of the procurement authority, or the Administrative Review Board, may extend the suspension provided for in subsection (1), and Administrative Review Board may extend the suspension provided for in subsection (2) in order to preserve the rights of the supplier or contractor submitting the complaint or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed 30 days.

(4) The suspension provided for by this section shall not apply if the procurement authority certifies that urgent public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such urgent considerations exist and which shall be made a part of the record of the procurement proceedings, is conclusive with respect to all levels of review except judicial review.

(5) Any decision by the procurement authority under this section and the grounds and circumstances therefore shall be made part of the record of the procurement proceedings.

Judicial Review

45. (1) The [name of the court] has jurisdiction over actions pursuant to section 39 and petitions for judicial review of decisions made by an Administrative Review Board, or of the failure of those bodies to make a decision within the prescribed time-limit, under section 40 or 41.

PART VII

CONTRACT ADMINISTRATION

Appointment of contract administrator

46. A contract administrator shall be appointed to represent the interests of the Government under every contract exceeding the limit prescribed by regulation.

Duties of contract administrator

47. (1) The contract administrator shall keep a written record of all dealings with the contractor and in particular shall keep minutes of all meetings with the contractor detailing matters discussed and decisions made.

(2) The contract administrator shall not agree to any change in the contract price or the material terms of a contract without the prior approval in writing of the procurement authority.

(3) The records referred to in subsection (1) and the changes approved by the procurement authority shall be placed in the procurement documents file.

Work not to commence until formal agreement or petty agreement executed

48. The contractor administrator shall not permit any work to commence under a construction contract before the formal agreement or petty agreement has been executed.

Breach of contract

49. (1) The contract administrator shall report any substantial breach of contract to the Procurement Board.

(2) When a contractor defaults in the performance of a contract, the Procurement Board may, subject the rights of the person who furnished the performance security, take such steps as it considers appropriate including issuing an invitation to tender or an request for proposal or negotiating a contract for completion of the contract.

PART VIII

SUSPENSION AND DEBARMENT

Suspension and debarment

50. (1) After reasonable notice to the person involved and a reasonable opportunity of that person to be heard, the Procurement Board may for cause—

- (a) suspend a person for not more than 6 months; or
- (b) debar a person for not more than 3 years,

from submitting a tender, proposal or quotation or making an offer for a sole source or emergency procurement or from entering into a contract in relation to any of them.

(2) A person may be suspended or debarred for any of the following—

- (a) conviction for an offence involving obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract;
- (b) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity;
- (c) conviction for an offence involving corruption;
- (d) engaging in anti-competitive practices, whether or not involving collusion and whether or not an offence under the law;
- (e) deliberate neglect or failure without good cause to perform a contract in accordance with its terms of so serious a nature as to justify suspension or debarment;
- (f) unethical conduct including—

- (i) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement,
 - (ii) offering to pay or paying a kickback whether in the form of a payment, gratuity, offer of employment or otherwise by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a contract, and
 - (iii) knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement.
- (3) No contract shall be awarded to a person when he is suspended or debarred.

PART IX

SANCTIONS

Sanctions

51. (1) A public officer who contravenes any of subsection 7, 13(5), or [to be completed] commits an offence and is liable to a fine

- (a) of not less than \$1,000 nor more than \$5,000 for the first offence; and
- (b) of not less than \$4,000 nor more than \$20,000 for a second or subsequent conviction.

(2) Every one who,

- (a) being a public officer, corruptly
 - (i) accepts or obtains;
 - (ii) agrees to accept, or
 - (iii) attempts to obtain;

any payment, offer of employment, gratuity or other reward for himself or another person in connection with a procurement, or

- (b) gives or offers, corruptly, to a person referred to in paragraph (a) any payment, offer of employment, gratuity or other reward in connection with a procurement

commits an offence and is liable to

- (c) a fine of not less than \$1,000 nor more than \$5,000 for the first offence;
and
- (d) a fine of not less than \$4,000 nor more than \$20,000 for a second or subsequent conviction, or
- (e) imprisonment for a term not exceeding _____.
- (3) Every one who,
- (a) being a public officer, knowingly
- (i) gives, or;
- (ii) agrees to give

confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement, or

- (b) knowingly solicit or obtain confidential information or attempt to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement

commits an offence and is liable to

- (c) a fine of not less than \$1,000 nor more than \$5,000 for the first offence;
and
- (d) a fine of not less than \$4,000 nor more than \$20,000 for a second or subsequent conviction, or
- (e) imprisonment for a term not exceeding _____.

Party to an offence

52. A person who does or omits to do something in order to assist a person in committing an offence against this act or who counsels, encourages or incites a person to commit an offence, also commits the offence and is liable to the same penalty

Report to the Public Service Commission

53. (1) Notwithstanding anything in this Part, whenever a case of the following type comes or is brought to the notice of an accounting officer, that accounting officer shall forthwith report the circumstances of this case to the Public Service Commission through the appropriate Minister:

- (a) artificial division of a procurement so as to be procured as a small procurement;
- (b) failure to take all necessary steps to keep all tenders or proposals received from being opened or tampered with until the date and time for the opening of tenders or proposals;
- (c) disclosing any information derived from a proposal or discussions with an offeror to another offeror while conducting or privy to discussions with an offeror;
- (d) accepting or obtaining, agreeing to accept or attempting to obtain any payment, offer of employment, gratuity or other reward in connection with a procurement;
- (e) giving or agreeing to give confidential information in relation to a procurement for the purpose of giving an advantage over other persons who submit or might reasonably be expected to submit a tender, proposal, quotation or offer in relation to an emergency procurement; or
- [(f) to be completed.]

(2) A copy of the report shall be transmitted to the Permanent Secretary.

(3) Notwithstanding anything in this Part, whenever a case of the type referred to in subsection (1) comes or is brought to the notice of the Permanent Secretary, the Permanent Secretary shall forthwith report the circumstances of the case to the Public Service Commission through the appropriate authority.

PART X**ANNUAL ASSESSMENT OF PROCUREMENT AND CONTRACT
ADMINISTRATION****Annual assessment and report**

54. (1) The Procurement Board shall annually, without delay after the tabling of the Report of the Director of Audit on the Public Accounts and the deadline for receipt of submissions under subsection (2), or more often as necessary—

- (a) do an assessment of procurement and contract administration in relation to the Regulations having regard to the issues and problems that have arisen or are likely to arise, including those identified in the Report of the Director of Audit for the previous financial year, and the cost and other measures necessary to address those issues and problems; and
- (b) prepare a report setting out its findings and its recommendations to address the issues and problems identified in the assessment, which shall include a summary of the steps that need to be taken, and by whom, to address the issues and problems.

(2) The Procurement Board shall annually, not later than March 31, publish in a newspaper of general circulation in Saint Vincent and the Grenadines a notice inviting written submissions from the public respecting government procurement and contract administration and setting out the deadline for the receipt of submissions, which shall not be less than 30 days after the notice is published.

(3) The report may contain recommendations for the amendment of these or any other Regulations under the Act.

(4) The report shall be sent to the Minister who, after such consultations as appear to him to be appropriate, shall determine what action shall be taken in relation to the report.

PART XI
REGULATIONS

Power to make regulations

55. (1) The Minister may make such regulations as appear to him to be necessary and expedient for the proper carrying out of the intent of this Act.

(2) Without restricting the generality of subsection (1), the Minister may make regulations

- (a) prescribing anything that under this Act may be prescribed;
 - (b) prescribing the procedure for the recruitment and selection of persons apt for appointment as members of the Administrative Review Board.
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