

# REPUBLIC OF VANUATU

## **BILL FOR THE PRIVATELY FINANCED AIRPORT INFRASTRUCTURE PROJECTS (AMENDMENT) ACT NO. OF 2017**

### **Explanatory Note**

This Bill amends the Privately Financed Airport Infrastructure Projects Act No. 20 of 2008.

Item 1 inserts 3 new definitions in section 1.

Item 2 amends the definition of “bidder” by inserting after the word “person”, the words “or consortium”. The bidder may either be the person or consortium who will participate in selection proceedings concerning an infrastructure project.

Item 3 amends the definition of “contracting authority” by inserting after the word “Minister”, the words “, a Government Department, a Government owned and controlled corporation, and any other entity as prescribed by the Regulation whether acting alone or jointly with any other contracting authority”. Office, corporation and entity are included as contracting authorities.

Item 4 repeals the definition of “infrastructure facility” and substitutes it with a new definition of “infrastructure facility”.

Item 5 repeals the definition of “infrastructure project” and substitutes it with a new definition of “infrastructure project”. This amendment is made to broaden the definition to also include maintenance and upgrade covering new and existing infrastructure facilities.

Item 6 amends the definition of “Minister” by inserting after the word “infrastructure”, the words “project or infrastructure facility”.

Item 7 amends the definition of “regulatory agency” by inserting after the word “services”, the words “or to carry out relevant works as required under this Act”. This amendment is required to ensure that the definition covers all stages of a project.

Item 8 amends paragraph 2(b) by deleting the words “development and operation” and substitutes it with the word “projects”.

Item 9 repeals paragraph 2(c) and substitutes it with a new paragraph (c).

Item 10 repeals subsection 3(1) and substitutes it with a new subsection (1).

Item 11 amends section 3 by adding at the end of that section, new subsections (3) and (4). Subsection (3) provides that this Act will not apply to a renewal or extension to the term of an

existing concession contract in accordance with its terms or to a variation to an existing concession contract in accordance with its terms. Subsection (4) provides that a contract that is entered into under this Act is to be extended to the entire region under the jurisdiction of the contracting authority, to a geographical subdivision or to a discrete infrastructure project, as the contracting party deems appropriate.

Item 12 amends section 4 by deleting the words “sections 6 to 27” and substitutes it with the words “sections 5 to 27”. This amendment is made to correct a cross referencing error.

Item 13 amends subsection 6(1) by inserting after the word “invitation”, the words “to participate in pre-selection proceedings”. This amendment is necessary to make it clear that this section applies to the pre-selection stage.

Item 14 amends paragraph 6(1)(c) by inserting after the word “a”, the word “brief” . This amendment requires a brief summary of the main concession contract.

Item 15 amends paragraph 6(1)(d) by deleting the word “sufficient” and substitutes it with the word “reasonable”. This amendment is to allow reasonable time to prepare and submit an application.

Item 16 amends paragraph 6(1)(e) by inserting after the word “fee”, the words “(if any)”.

Item 17 amends paragraph 7(a) by deleting the words “including design, construction, operation and maintenance”.

Item 18 amends paragraph 7(c) by deleting the words “operating similar infrastructure facilities” and substitutes it with the words “delivering similar infrastructure projects or services”.

Item 19 amends subsection 8(1) by deleting the word “bidders” and substitutes it with the word “persons”.

Item 20 repeals subsection 8(2) and substitutes it with new subsections (2), (2A) and (2B).

Item 21 amends section 9 by inserting after that section a new section 9A. This new section provides for the change to a pre-selected bidder. Essentially, the suggested new provision requires the bidder to resubmit a pre-selection application based on the new composition of the bidder.

Item 22 amends subsection 10(4) by inserting after the word “to” (second occurring), the word “any or”.

Item 23 amends subsection 10(5) by deleting the words “any of the” and substitutes it with the words “pre-selected”.

Item 24 amends paragraph 10(5)(b) by inserting after the word “submitted”, the words “or to be submitted” .

Item 25 inserts after subsection 10(5) a new subsection (5A) to provide that the contracting authority must ensure the equality of treatment among all pre-selected bidders and must not

provide information that is discriminatory and gives one or more pre-selected bidders advantage over another.

Item 26 repeals subsection 10(7) and substitutes it with new subsection (7). The new subsection (7) provides for the contracting authority to revise any aspect of the initial project including contractual terms, but may not revise any criteria for evaluating and comparing proposals and ascertaining the successful bidder. This amendment is made to provide for a more transparent process and to give bidders certainty.

Item 27 amends subsection 10(8) by deleting the words “revision to the request for proposals” and substitutes it with the words “such revision”.

Item 28 amends subsection 10(10) by deleting the words “deletion, modification or addition” and substitutes it with the words “such revision”.

Item 29 amends paragraph 11(a) by deleting the word “sufficient” and substitutes it with the word “reasonable”.

Item 30 repeals section 12 and substitutes it with a new section 12. The new section 12 provides for bid securities. This amendment will ensure that any request for proposals relating to an infrastructure project, must set out the validity period and other principal terms and conditions including circumstances in which the bid security may be called upon.

Item 31 amends subsection 13(1) by inserting after that subsection a new subsection (1A) to provide that despite subsection 10(7), a revision to the criteria for evaluating proposals may be made to the extent necessary to correct a genuine error.

Item 32 repeals subsection 13(3) and substitutes it with a new subsection (3) to provide that any revision is to be communicated to all pre-selected bidders at the same time, which must be a reasonable time prior to the deadline for submission of proposals.

Item 33 repeals paragraph 14(2)(a) and substitutes it with a new paragraph (a). The new paragraph (a) provides that the present value of the proposed tolls, tariffs, fees, unit price and other charges over the concession period may be included as a criteria for the evaluation and comparison of financial and commercial; proposals in relation to an infrastructure project.

Item 34 repeals paragraph 14(2)(b) and substitutes it with a new paragraph (b). This new paragraph (b) provides for the present value of the proposed direct payment by the contracting authority to the concessionaire or the concessionaire to the contracting authority.

Item 35 amends paragraph 14(2)(g) by deleting the full stop and substituting it with a semi column, to provide for a new paragraph (h). The new paragraph (h) provides that the contracting authority may consider other matters for the evaluation and comparison of financial and commercial proposals, as it considers appropriate.

Item 36 amends subsection 16(2) by deleting the words “demonstrate again its qualifications” and substitutes it with the new words “meet the pre-selection criteria”. This amendment is to provide transparency and certainty to bidders.

Item 37 amends the heading of section 17 by inserting after the word “negotiations”, the words “and best and final offers”.

Item 38 amends paragraph 17(1)(b) by inserting the word “subject to subsection (1A)” before the word “invite”.

Item 39 inserts after subsection 17(1) a new subsection (1A).

Item 40 repeals subsection 17(2) and substitutes it with a new subsection (2) providing for the requirements of a final negotiation.

Item 41 amends subsection 17(3) by inserting after the words “concession contract”, the words “that is acceptable to the contracting authority” .

Item 42 amends paragraph 17(3)(b) by deleting the words “formulate its best and final offer” and substitutes it with the words “propose a concession contract that is acceptable to the contracting authority”.

Item 43 amends subsection 17(4) by deleting the words “final offer” and substitutes it with the words “proposals made by the bidder in accordance with subsection (3)”.

Item 44 amends subsection 17(5) by inserting after the word “other”, the word “pre-selected”.

Item 45 amends section 17 by inserting after section 17, two new sections 17A and 17B. The new section 17A permits the contracting authority to either terminate or continue with the selection process where there is only a single bidder. Section 17B permits the contracting authority to terminate the selection process in certain circumstances.

Item 46 amends sections 18 and 20, subsections 19(1) and 22(1) and paragraph 18(a), by deleting “sections 6” and substitutes it with “sections 5”. This amendment is made to correct an error in the cross referencing.

Item 47 amends paragraph 18(a) by inserting after the word “service”, the words “or infrastructure facility”.

Item 48 amends paragraph 18(c) by deleting the words “the infrastructure projects involves” and substitutes it with the words “for reasons related to”.

Item 49 repeals paragraph 18(d) and substitutes it with a new paragraph (d).

Item 50 amends subparagraph 18(e)(iii) by deleting the full stop and substitutes it with a semi column and the word “or” followed with two new paragraphs (f) and (g).

Item 51 amends paragraph 19(1)(c) by inserting before the word “establish”, the words “where proposals are being sought from more than one person”.

Item 52 amends subsection 19(3) by inserting after the word “newspaper”, the words “Government’s or contracting authority’s website”.

Item 53 amends section 20 by deleting the words “or announced” and substitutes it with the words “(unless such selection procedures have subsequently been terminated in accordance with this Act)”.

Item 54 amends paragraph 21(3)(c) by deleting the full stop and substitutes it with the semi column and the word “and” and a new paragraph (d). This amendment requires the proponent to also submit such other information about the proposal as the contracting authority may reasonably require.

Item 55 amends subsection 21(7) by inserting the new words “without the written consent of the proponent” after the word “not”. It also deletes the words “without the written consent of the proponent” and substitutes it with the words “or for the purpose of initiating a selection procedure in accordance with section 22”.

Item 56 repeals paragraph 22(1)(b) and substitutes it with a new paragraph (b). This amendment is made to ensure that the contracting authority is not required to initiate a competitive selection process where it is not technically feasible for any person other than the proponent to deliver the project.

Item 57 repeals subsection 23 (1) and substitutes it with a new subsection (1). This is a consequential amendment to paragraph 22(1)(b) in item 56.

Item 58 amends subsection 23(3) by inserting after the word “Vanuatu”, the words “and otherwise as the contracting authority considers appropriate”.

Item 59 amends subsection 23(4) by inserting after the word “days”, the words “or if the contracting authority elects not to obtain elements of comparison for the unsolicited proposal” .

Item 60 amends subsection 23(6) by deleting the word “infrastructure”.

Item 61 repeals subsection 24(2) and substitutes it with a new subsection (2) to provide that unless required by law or a Court order, a receiving party is not to disclose any technical, price or other information which is identified by the disclosing party to be confidential without the disclosing party’s consent.

Item 62 repeals subsection 24(3) and substitutes it with a new subsection (3) to provide for the Regulations to prescribe special procedures relating to the handling of unsolicited proposal.

Item 63 repeals subsection 24(4) by repealing that subsection and substitutes it with a new subsection (4).

Item 64 amends subsection 25(1) by inserting after the word “the”, the word “concession”. It also inserts after the word “newspaper”, the words “and on the Government or the contracting authority’s website”.

Item 65 amends section 28 by deleting the words “ such matters as the parties agree” and substitutes it with the words “ those matters (if any) that has been stated as non-negotiable in the request of proposals together with such other matters as the parties agree”.

Item 66 amends paragraph 28(b) by inserting after the word “those”, the words “works and”.

Item 67 repeals paragraph 28(c) and substitutes it with a new paragraph (c) to provide that a concession contract must include requirements relating to licences, permits and permissions to be obtained and maintained by the concessionaire and the assistance provided by the contracting authority to the concessionaire to obtain the licences, permits and permissions.

Item 68 repeals paragraph 28(d) and substitutes it with a new paragraph (d) to provide that a concession contract must include any requirements relating to the establishment, regulation and minimum capital of the concessionaire.

Item 69 amends paragraph 28(e) by inserting after the word “the” (second occurring), the word “infrastructure”.

Item 70 amends paragraph 28(m) by deleting the words “guarantees of performance” and substitutes it with the words “performance security and guarantees”.

Item 71 amends subsection 30(1) by inserting after the word “Vanuatu”, the words “to undertake the role of the concessionaire”.

Item 72 amends subsection 30(2) by deleting the words “consistent with the terms of request for proposals”.

Item 73 amends section 30 by adding at the end of that section, a new subsection (3) to provide that the contracting authority must specify a shareholder or similar interest in the concessionaire or its holding company (or similar entity) if a selection process is undertaken under Part 2 and 3 of this Act.

Item 74 repeals subsection 34(2) and substitutes it with a new subsection (2) providing that the contracting authority may provide financial or other economic support to the concessionaire and to make direct payments to the concessionaire as a substitute for, or in addition to, tariffs or fees for the use of the infrastructure facility or its services.

Item 75 amends the heading of section 38 by inserting after the word “infrastructure”, the word “facilities”.

Item 76 repeals subsection 38(2) and substitutes it with a new subsection (2).

Item 77 amends the heading of section 39 by deleting the words “changes in legislation” and substitutes it with the word “events”.

Item 78 amends section 39 by inserting after the word “extent”, the words “(if any)”. It also inserts after the word “provides”, the words “or as a result of any other event specified in the concession contract”.

Item 79 amends subsection 40(1) by deleting the words “changes in economic or financial conditions, or”. It also inserts after the word “provides”, the word “or as a result of any other event specified in the concession contract”.

Item 80 amends subsection 40(2) by deleting the words “economic, financial, legislative or regulatory changes” and substitutes it with the words “relevant events”.

Item 81 amends subsection 40(3) by deleting the word “changes” and substitutes it with the word “events”.

Item 82 amends paragraph 41(a) by deleting the word “serious”. The rationale for this amendment is that the provisions of the concession contract itself will clearly set out the circumstances and types of failure which may lead to the contracting authority taking over the infrastructure facility and these provisions should not be constrained by or be inconsistent with the Act.

Item 83 amends section 41 by deleting the word “Under” and substitutes it with subsection “(1) Under”. This amendment is necessary so that the new subsection (2) could be inserted in the Act to provide that the concession authority may specify other circumstances where the contracting authority has the right to temporarily take over the operation of the infrastructure facility and the extent to which the concessionaire may be compensated or held harmless.

Item 84 repeals subsection 43(2) and substitutes it with a new subsection (2) to provide that the concession contract may specify the circumstances in which the duration of the concession may be extended.

Item 85 repeals subsection 43(3).

Item 86 repeals section 44 and substitutes it with a new section 44. The rationale for this is that the provisions of the concession contract itself will clearly set out the events and processes relating to termination and these provisions should not be constrained by or be inconsistent with the Act.

Item 87 repeals sections 45 and 46.

Item 88 amends section 47 by inserting after the word “appropriate”, the words “and depending upon the event giving rise to termination”.

Item 89 amends paragraphs 48(a) and (b) by inserting after the words “contracting authority” (wherever occurring), the words “or its nominee”.

Item 90 amends paragraph 48(e) by deleting the full stop and substituting it with a semi column followed by a new paragraph (f).

## **Minister of Infrastructure and Public Utilities**



**REPUBLIC OF VANUATU**

**BILL FOR THE  
PRIVATELY FINANCED AIRPORT  
INFRASTRUCTURE PROJECTS (AMENDMENT)  
ACT NO. OF 2017**

**Arrangement of Sections**

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# REPUBLIC OF VANUATU

## **BILL FOR THE PRIVATELY FINANCED AIRPORT INFRASTRUCTURE PROJECTS (AMENDMENT) ACT NO. OF 2017**

An Act to amend the Privately Financed Airport Infrastructure Projects Act No. 20 of 2008.

Be it enacted by the President and Parliament as follows-

### **1 Amendments**

The Privately Financed Airport Infrastructure Projects Act No. 20 of 2008 is amended as set out in the Schedule.

### **2 Commencement**

This Act commences on the day on which it is published in the Gazette.

## SCHEDULE

### AMENDMENTS OF THE PRIVATELY FINANCED AIRPORT INFRASTRUCTURE PROJECTS ACT NO. 20 OF 2008

#### 1 Section 1

Insert in their correct alphabetical positions:

“**consortium** means any group made up of two or more individuals, companies or other legal entities, working together, and acting collectively, to achieve a common objective;

**person** means a natural person, corporation, trust, partnership, unincorporated body, organisation or entity;

**Regulation** means a Regulation made under section 53;”

#### 2 Section 1 (definition of bidder)

After “person”, insert “or consortium”;

#### 3 Section 1 (definition of contracting authority)

After “Minister”, insert “, a Government Department, a Government owned and controlled corporation, and any other entity as prescribed by the Regulation whether acting alone or jointly with any other contracting authority”

#### 4 Section 1 (definition of infrastructure facility)

Repeal the definition, substitute

“**infrastructure facility** means works, developments, buildings, premises, infrastructure, assets, equipment and systems (including software) that are used directly or indirectly to provide services to a group or specific category of the general public;”

#### 5 Section 1 (definition of infrastructure project)

Repeal the definition, substitute

“**infrastructure project** means the design, construction, development, maintenance and operation of new infrastructure facilities in relation to airports or the renewal or upgrade of the rehabilitation, modernization, expansion, maintenance or operation of existing infrastructure facilities in relation to airports;”

**6 Section 1 (definition of Minister)**

After “infrastructure”, insert “project or infrastructure facility”

**7 Section 1 (definition of regulatory agency)**

After “services”, insert “or to carry out relevant works as required under this Act”

**8 Paragraph 2(b)**

Delete “development and operation”, substitute “projects”

**9 Paragraph 2(c)**

Repeal the paragraph, substitute

“(c) to develop the general principles of transparency, value for money and fairness in the award of contracts in relation to airport infrastructure projects through the establishment of specific procedures for the award of such contracts.”

**10 Subsection 3(1)**

Repeal the subsection, substitute

“(1) This Act applies to infrastructure projects that are privately financed (in whole or in part) in the civil aviation sector.”

**11 At the end of section 3**

Add,

“(3) In addition to subsection (2), this Act does not apply:

- (a) to a renewal or extension to the terms of an existing concession contract; or
- (b) to a variation to an existing concession contract in accordance with its terms, where such variation:
  - (i) is referred to in, or may reasonably be inferred from, the invitation to participate in the pre-selection proceedings issued in respect of concession contract; or
  - (ii) does not fundamentally alter the subject matter of the concession contract to such an extent that it may reasonably be regarded as constituting a new concession contract.

(4) A concession contract entered into under this Act may extend to the entire region under the jurisdiction of the contracting authority, to a geographical

subdivision or to a discrete infrastructure project with the remit of the contracting authority as the contracting authority deems appropriate.”

**12 Section 4**

Delete “sections 6 to 27”, substitute “sections 5 to 27”

**13 Subsection 6(1)**

After “invitation”, insert “to participate in pre-selection proceedings,”

**14 Paragraph 6(1)(c)**

After “a”, insert “brief”

**15 Paragraph 6(1)(d)**

Delete “sufficient”, substitute “reasonable”

**16 Paragraph 6(1)(e)**

After “fee”, insert “(if any)”

**17 Paragraph 7(a)**

Delete “, including design, construction, operation and maintenance”

**18 Paragraph 7(c)**

Delete “operating similar infrastructure facilities”, substitute “delivering similar infrastructure projects or services”

**19 Subsection 8(1)**

Delete “bidders”, substitute “persons”

**20 Subsection 8(2)**

Repeal the subsection, substitute

- “(2) Subject to subsection (2A), if a consortium is formed, the contracting authority must assess the consortium as a whole against the pre-selection criteria for the infrastructure project.
- (2A) If the pre-selection criteria for the infrastructure project include matters relating to the solvency, professional conduct or ethics of a bidder, the contracting authority may assess consortium members against such criteria on an individual basis.
- (2B) If a consortium member fails to meet such pre-selection criteria and the contracting authority would, if the bidder is a single person, be entitled by the pre-selection criteria to disqualify that bidder from the pre-selection process, the contracting authority must either:

- (a) disqualify the consortium from the pre-selection process; or
- (b) require the consortium to remove the relevant member from the consortium as a condition of the consortium continuing to participate in the pre-selection process.”

**21 After section 9**

Insert

**“9A Consortium change to a pre-selected bidder**

- (1) This section applies if a pre-selected bidder is:
  - (a) a single person who wishes to participate in the remainder of the process as part of a consortium with one or more other persons; or
  - (b) a consortium who wishes to change the composition of the consortium (whether by removal of a consortium member or inclusion of a new consortium member).
- (2) If a pre-selected bidder wishes to make one of the changes under paragraph 1(a) or (b) the bidder must notify the contracting authority in writing, providing full details of the proposed change.
- (3) Subject to subsection (2), the pre-selected bidder must re-submit an application for pre-selection reflecting the relevant change, within such time as the contracting authority reasonably requires.
- (4) The contracting authority must assess the revised application for pre-selection against the pre-selection criteria.
- (5) If such re-evaluation indicates that the bidder would not have been pre-selected had the new information been included in the original application for pre-selection, the contracting authority must either:
  - (a) disqualify the bidder from further participation in the process; or
  - (b) require the bidder not to effect the proposed change to its composition as a condition of the bidder being permitted to continue to participate in the selection process.
- (6) If a bidder is disqualified in accordance with paragraph (5)(a), the contracting authority may select the second highest ranked bidder who met

the pre-selection criteria but was not shortlisted to resume its participation in the selection process.”

**22 Subsection 10(4)**

After “to” (second occurring), insert “any or”

**23 Subsection 10(5)**

Delete “any of the”, substitute “pre-selected”

**24 Paragraph 10(5)(b)**

After “submitted”, insert “or to be submitted”

**25 After subsection 10(5)**

Insert

“(5A) The contracting authority must:

- (a) ensure equality of treatment among all pre-selected bidders; and
- (b) not provide information in a discriminatory manner which may give to one or more pre-selected bidders an advantage over any other pre-selected bidder.”

**26 Subsection 10(7)**

Repeal the subsection, substitute

“(7) The contracting authority may revise any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the infrastructure project, including the contractual terms but excluding any criteria for evaluating and comparing proposals and for ascertaining the successful bidder.”

**27 Subsection 10(8)**

Delete “revision to the request for proposals”, substitute “such revision”

**28 Subsection 10(10)**

Delete “deletion, modification or addition”, substitute “revision”

**29 Paragraph 11(a)**

Delete “sufficient”, substitute “reasonable”

**30 Section 12**

Repeal the section, substitute

**“12 Bid securities**

The request for proposals in relation to an infrastructure project must set out the following requirements with respect to the bid security:

- (a) the issuer; and
- (b) the nature, validity period, form and amount; and
- (c) the other principal terms and conditions including circumstances in which the bid security may be called upon.”

**31 After subsection 13(1)**

Insert

“(1A) Despite subsection 10(7), a revision to the criteria for evaluating proposals (including the weight to be accorded to each evaluation criteria and the manner in which the criteria and thresholds are applied) may be made to the extent necessary to correct a genuine error.”

**32 Subsection 13(3)**

Repeal the subsection, substitute

“(3) Any such revision is to be communicated to all the pre-selected bidders at substantially the same time, which must be within a reasonable time prior to the deadline for submission of proposals.”

**33 Paragraph 14(2)(a)**

Repeal the paragraph, substitute

“(a) the present value of the proposed tolls, tariffs, fees, unit prices and other charges over the concession period;”

**34 Paragraph 14(2)(b)**

Repeal the paragraph, substitute

“(b) the present value of the proposed direct payments by the:

- (i) contracting authority to the concessionaire (if any); or
- (ii) concessionaire to the contracting authority;”

**35 Paragraph 14(2)(g)**

Delete “.”, substitute “;

(h) other matters as the contracting authority considers appropriate.”

**36 Subsection 16(2)**

Delete “demonstrate again its qualifications”, substitute “meet the pre-selection criteria”

**37 Section 17(heading)**

After “negotiations”, insert “and best and final offers”

**38 Paragraph 17(1)(b)**

Before “invite”, insert “subject to subsection (1A),”

**39 After subsection 17(1)**

Insert

“(1A) Prior to inviting the bidder that has attained the best rating for final negotiation of a concession contract in accordance with subsection (1), the contracting authority may:

- (a) convene meetings with the bidders who submitted responsive proposals to discuss their proposals according to subsection 10(5A); and
- (b) request all the bidders who submitted responsive proposals to submit their best and final offers in respect of the infrastructure project, in which case section 15 and subsection 17(1) may apply to the evaluation of such best and final offers.”

**40 Subsection 17(2)**

Repeal the subsection, substitute

“(2) A final negotiation must not concern the contractual terms that were stated as non-negotiable in the request for proposals, or fundamentally alter the risk allocation under the terms of the concession contract in favour of the concessionaire.”

**41 Subsection 17(3)**

After “concession contract”, insert “that is acceptable to the contracting authority”

**42 Paragraph 17(3)(b)**

Delete “formulate its best and final offer”, substitute “propose a concession contract that is acceptable to the contracting authority”

**43 Subsection 17(4)**

Delete “final offer”, substitute “proposals made by the bidder in accordance with subsection (3)”



**44 Subsection 17(5)**

After “other”, insert “pre-selected”

**45 After section 17**

Insert

**“17A Sole bidder processes**

Where an invitation to participate in pre-selection proceedings or a request for proposals has been issued and in the event that:

- (a) only one bidder has submitted an application or proposal; or
- (b) more than one bidder has submitted an application or proposal but:
  - (i) only one bidder’s application or proposals meets the pre-selection criteria or evaluation criteria; or
  - (ii) all bidders other than one bidder subsequently withdraws or are disqualified from the selection process,

the contracting authority may terminate the selection proceedings or continue to negotiate the concession contract with the remaining bidder.

**17B Termination of the selection process**

- (1) The contracting authority may terminate any selection process undertaken pursuant to Parts 2 and 3 of this Act in the following circumstances:
  - (a) where expressly permitted by this Act; or
  - (b) if the cost of the infrastructure project to the contracting authority exceeds the budgeted amount; or
  - (c) if the contracting authority reasonably determines that it is in the interest of the public to terminate the selection process.
- (2) The contracting authority must notify the bidders in writing of the termination of the selection process.”

**46 Sections 18 and 20, subsections 19(1) and 22(1) and paragraph 18(a)**

Delete “sections 6”, substitute “sections 5”

**47 Paragraph 18(a)**

After “service”, insert “or infrastructure facility”

**48 Paragraph 18(c)**

Delete “the infrastructure project involves”, substitute “for reasons related to”

**49 Paragraph 18(d)**

Repeal the paragraph, substitute

“(d) there is only one source capable of providing the required service or infrastructure facility, such as when the provision of the service or infrastructure facility requires the use of exclusive intellectual property, trade secrets or other exclusive rights owned or possessed by that person or where it is not technically feasible for any other person to provide the required service or infrastructure facility; or”

**50 Subparagraph 18(e)(ii)**

Delete “.”, substitute “; or

(f) the value of the infrastructure project and the services to be provided in connection therewith does not exceed an amount prescribed by the regulations; or

(g) the total aggregate term of the concession contract does not exceed a duration prescribed by the regulations.”

**51 Paragraph 19(1)(c)**

Before “establish”, insert “where proposals are being sought from more than one person,”

**52 Subsection 19(3)**

After “newspaper”, insert “, the Government’s or the contracting authority’s website”

**53 Section 20**

Delete “or announced”, substitute “(unless such selection procedure have subsequently been terminated in accordance with this Act)”

**54 Paragraph 21(3)(c)**

Delete “.”, substitute “; and

(d) such other information as the contracting authority may reasonably require.”

**55 Subsection 21(7)**

- (a) After “not”, insert “without the written consent of the proponent”;
- (b) Delete “without the written consent of the proponent”, substitute “or for the purpose of initiating a selection procedure in accordance with section 22”.

**56 Paragraph 22(1)(b)**

Repeal the paragraph, substitute

- “(b) either:
  - (i) the envisaged output of the infrastructure project may be achieved without the use of exclusive intellectual property, trade secrets or other exclusive rights owned or possessed by the proponent of the unsolicited proposal; or
  - (ii) the proposed concept or technology contemplated in the proposal is not truly unique or new and it is technically feasible for a person other than the proponent to deliver the infrastructure project; and”

**57 Subsection 23(1)**

Repeal the subsection, substitute

- “(1) If a contracting authority determines that neither subparagraph 22(1)(b)(i) or (ii) has been met, the contracting authority is not required to carry out a selection procedure pursuant to sections 5 to 17.”

**58 Subsection 23(3)**

After “Vanuatu”, insert “and otherwise as the contracting authority determines”

**59 Subsection 23(4)**

After “days”, insert “or if the contracting authority elects not to obtain elements of comparison for the unsolicited proposal”

**60 Subsection 23(6)**

Delete “infrastructure”

**61 Subsection 24(2)**

Repeal the subsection, substitute

- “(2) Unless required by law or by a Court order, or permitted by the pre-selection documents or the request for proposals, a receiving party must not disclose to any other person any technical, price or other information which is reasonably identified by the disclosing party as being confidential without the disclosing party's consent.”

**62 Subsection 24(3)**

Repeal the subsection, substitute

“(3) The Regulations may prescribe special procedures relating to the handling of unsolicited proposals.”

**63 Subsection 24(4)**

Repeal the subsection, substitute

“(4) Nothing in this section may prevent:

- (a) the contracting authority from revising any aspect of infrastructure project as required under subsection 10(7) or from revising any aspect of the request for proposals as required under subsection 13(1); or
- (b) the contracting authority from initiating a selection procedure under section 22 or from issuing an invitation under paragraph 23(3)(b); or
- (c) any party from disclosing information to its advisors if such advisors are required to keep that information confidential; or
- (d) any disclosure to the extent required by applicable law, and such action may not constitute a contravention of any part of this section.”

**64 Subsection 25(1)**

- (a) After “the”, insert “concession”;
- (b) After “newspaper”, insert “and on the Government or the contracting authority’s website”.

**65 Section 28**

Delete “such matters as the parties agree”, substitute “those matters (if any) that has been stated as non-negotiable in the request for proposals together with such other matters as the parties agree”

**66 Paragraph 28(b)**

After “those”, insert “works and”

**67 Paragraph 28(c)**

Repeal the paragraph, substitute

“(c) any requirements relating to the licences, permits and permissions that the concessionaire must obtain and maintain and the assistance that the contracting authority may provide to the concessionaire in obtaining such licences, permits and permissions;”

**68 Paragraph 28(d)**

Repeal the paragraph, substitute

“(d) any requirements relating to the establishment, regulation and minimum capital of the concessionaire;”

**69 Paragraph 28(e)**

After “the” (second occurring), insert “infrastructure”

**70 Paragraph 28(m)**

Delete “guarantees of performance”, substitute “performance security and guarantees”

**71 Subsection 30(1)**

After “Vanuatu”, insert “to undertake the role of the concessionaire”

**72 Subsection 30(2)**

Delete “consistent with the terms of the request for proposals”

**73 At the end of section 30**

Add

“(3) The contracting authority must specify in the request for proposal a shareholding or similar interest in the concessionaire or its holding company (or similar entity) whether directly or indirectly, if a selection process is undertaken under Parts 2 and 3 of this Act.”

**74 Subsection 34(2)**

Repeal the subsection, substitute

“(2) The contracting authority may:

- (a) provide financial or other economic support to the concessionaire as it considers fit and the concession contract may set out the extent to which such support may be provided; and
- (b) make direct payments to the concessionaire as a substitute for, or in addition to, tariffs or fees for the use of the infrastructure facility or its services.”

**75 Section 38 (heading)**

After “infrastructure”, insert “facilities”

**76 Subsection 38(2)**

Repeal the subsection, substitute

“(2) The concession contract is to specify the extent to which the concessionaire has the right to issue and enforce rules governing the use of the infrastructure facility, subject to the approval of such rules by the contracting authority.”

**77 Section 39 (heading)**

Delete “changes in legislation”, substitute “events”

**78 Section 39**

(a) After “extent”, insert “(if any)”;

(b) After “provides”, insert “or as a result of any other event specified in the concession contract”.

**79 Subsection 40(1)**

(a) Delete “changes in economic or financial conditions, or”;

(b) After “provides”, insert “or as a result of any other event specified in the concession contract”.

**80 Subsection 40(2)**

Delete “economic, financial, legislative or regulatory changes”, substitute “relevant events”

**81 Subsection 40(3)**

Delete “changes”, substitute “events”

**82 Paragraph 41(a)**

Delete “serious”

**83 Section 41**

(a) Delete “Under”, substitute “(1) Under”

(b) After subsection (1)

Insert

“(2) The concession contract may specify other circumstances in which the contracting authority has the right to temporarily take over the operation of the infrastructure facility and the extent to which the concessionaire may be compensated or held harmless.”

**84 Subsection 43(2)**

Repeal the subsection, substitute

“(2) The concession contract may specify the circumstances in which the duration of the concession may be extended.”

**85 Subsection 43(3)**

Repeal the subsection.

**86 Section 44**

Repeal the section, substitute

**“44 Termination of the concession contract**

The concession contract may specify the circumstances in which the concessionaire and the contracting authority may terminate the concession contract.”

**87 Sections 45 and 46**

Repeal the sections.

**88 Section 47**

After “appropriate”, insert “and depending upon the event giving rise to termination”

**89 Paragraphs 48(a) and (b)**

After “contracting authority” (wherever occurring), insert “or its nominee”

**90 Paragraph 48(e)**

Delete “.”, substitute “;

- (f) the transfer of staff from the concessionaire or its subcontractors to the contracting authority or its nominee and the terms of such transfer, and may include (but is not limited to) obligations on the concessionaire to provide information relating to the:
- (i) transferring staff; and
  - (ii) entitlements of transferring staff and the terms on which they are to be offered employment; and
  - (iii) responsibility for redundancy payments in the event that offers of employment are not made or are rejected by the transferring staff; and

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- (iv) responsibility for accrued employment liabilities in respect of the transferring staff arising prior to the date of transfer.”