

Subject: Scope of Application of the Government Tenders and Procurements Law and its Implementing Regulations

Telegram Circulation

To All Ministries and Government Authorities

Dear Sirs,

With reference to the Government Tenders and Procurements Law issued by Royal Decree No. M/58, dated 04/09/1427 H and its implementing regulations issued by Ministerial Decision No. 362, dated 20/02/1428 H, both of which entering into force on 20/02/1428 H;

And since the Ministry would like to explain to government authorities the scope of application of the Law regarding tenders and procurements whose contracts have been executed under the previous law or whose awarding and contract execution procedures have not been completed yet. In addition, the Ministry would like to explain the procedures related to using current contract forms for the contracts that shall be executed with contractors and sub-contractors after enforcement of the Law, as well as the procedures related to using bank guarantee forms and samples.

Accordingly, please be advised of the following:

First: Scope of Application of the Law:

- A) The rules and provisions of the previous government procurement law and its implementing regulations shall be applied to works that have been announced or contracts that have been concluded under the provisions of the previous Law since the previous Law is the law that governs the contract. This is due to the fact that contracts are governed by the rules that were applied to them at the time they were concluded. Parties to such contracts may benefit from the new incentives stipulated for in Council of Ministers' Decision No. 23, dated 17/01/1428 H; and
- B) The rules and provisions of the new Government Tenders and Procurements Law shall be applied to works announced after the enforcement of the Law, and the provisions of the Law and its implementing regulations shall be adhered to regarding such works.

Second: Using Current Contract Forms

Pursuant to the provisions of Article No. 29 of the Government Tenders and Procurements Law which states that "When drafting contracts, government authorities shall use contract forms approved in accordance with this Law" and Article No. 72 of the same Law which states that "The Ministry of Finance shall prepare the contract forms in accordance with the provisions of this Law and bring them before the Council of Ministers for approval". Therefore, the Ministry shall examine and review contract forms in accordance with the provisions of this Law and its implementing regulations, and submit the same to the Council of Ministers for approval. Current contract forms shall be used from the

date of enforcement of the Law until the issuance of new contract forms. The Ministry has prepared amended versions of such forms in light of the Law and its implementing regulations / Attachments No. 1, 2, 3, & 4 to be taken into consideration by government agencies upon drafting their contracts. Such amendments shall be provided in separate annexes to the contract documents.

Third: Using Bank Guarantee Forms

Government authorities, their contractors, and all banks shall continue to use the bank guarantee letter forms (bid bonds, advance payment, and irrevocable bank guarantees) issued by Ministry Circulation No. 144, dated 06/07/1411 H. Bank guarantee extension and confiscation request forms and formats issued by Ministry Circulation No. 17/67, dated 02/04/1408 H shall be used until they are revised and the necessary amendments are made.

Sincerely,

Minister of Finance
Ibrahim bin Abdul-Aziz Al-Assaf

Attachment No. 1

Amendments to the Public Works Contract form issued by Council of Ministers' Decision No. 136, dated 13/06/1408 H

First: Section one: Main Contract Document:

1. The penultimate paragraph of the introduction to the document shall be amended to refer to the Government Tenders and Procurements Law issued by Royal Decree No. M/58, dated 04/09/1427 H and its implementing regulations issued by the Minister of Finance's Decision No. 362, dated 20/02/1428 H; and
2. Article No. 4 and its elaborations in Article No. 41 of the General Conditions shall be amended in accordance with the provisions of Articles No. 107, 108, and 109 of the Law's implementing regulations.

Second: Section Two: General Conditions:

1. The provisions provided for in Article No. 47 of the Law's implementing regulations shall be added to Article No. 3 which concerns the assignment of the contract to other parties;
2. Paragraph No. 3 of Item 'Second' in Article No. 9 shall be removed;
3. Item 'Third' of Article No. 3 shall be amended in accordance with the provisions of Paragraph A of Article No. 33 of the Law;
4. Article No. 10-2 shall be amended in accordance with the provisions of Article No. 48 of the Law's implementing regulations;
5. Article No. 12-2-A shall be amended in accordance with the provisions of Article No. 5 of the Law and Article No. 2 of its implementing regulations;
6. A paragraph shall be added to the introduction of Article No. 34 entailing that the work site shall be handed over to the contractor within a period that does not exceed sixty (60) days from the date of awarding the contract in accordance with the provisions of Paragraph B of Article No. 30 of the Law;
7. Article No. 36 shall be amended so as to state that contract renewal and exemption from fine payment shall be implemented in accordance with the provisions of Articles No. 51 and 52 of the Law as well as the provisions of Chapter 14 of the Law's implementing regulations;
8. The method for calculating fine deduction provided for in Article No. 39 shall be amended in accordance with the provisions of Article No. 84 of the Law's implementing regulations;
9. Article No. 40 shall be amended in accordance with the provisions of Article No. 88 of the Law's implementing regulations; and the provisions of Article No. 89 of the implementing regulations shall be added to the same;
10. Article No. 44 shall be amended in accordance with the provisions of Paragraph No. 4 of Article No. 58 of the Law's implementing regulations;
11. Article No. 50 shall be amended in accordance with the provisions of Article No. 38 of the Law, Articles No. 62, 63, and 66 of the Law's implementing regulations, and Item No. 1 of Council of Ministers' Decision No. 23, dated 17/01/1428 H;

12. Article No. 53 shall be amended in accordance with the provisions of Article No. 53 of the Law and Article No. 104 of its implementing regulations;
13. Article No. 54 shall be amended in accordance with the provisions of Chapter 15 of the Law's implementing regulations;
14. Article No. 60 shall be amended in accordance with the provisions of Article No. 43 of the Law; and
15. The provisions of Article No. 153 of the Law's implementing regulations shall be considered in contracts executed in the Holy places.

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Attachment No. 2

Amendments to the Operational, Maintenance, and Cleaning Contract form issued by Council of Ministers' Decision No. 268, dated 30/10/1422 H

First: Main Contract Document:

1. The phrase "via local newspapers" provided for in the introduction of Item 'Second' in the penultimate paragraph shall be removed. Reference to the Law in this paragraph shall be amended to refer to the Government Tenders and Procurements Law issued by Royal Decree No. M/58, dated 04/09/1427 H and its implementing regulations issued by the Minister of Finance's Decision No. 362, dated 20/02/1428 H. The duration of the contract shall be provided in days in Article No. 3.

Second: General Conditions:

1. The month provided for in Paragraph M of Item 'First' of Article No. 1 shall be defined as a Georgian month; and
2. The conditions for the assignment of the contract to other parties provided for in Article No. 47 of the Law's implementing regulations shall be added to Article No. 3 of the General Conditions.

Third: General Obligations:

1. Article No. 12 shall be amended in accordance with the provisions of Article No. 45, Paragraph B and Article No. 46, Paragraph C of the Law's implementing regulations;
2. The wording of Paragraph A of Article No. 13-2 shall be amended in accordance with the provisions of Article No. 5 of the Law and Article No. 2 of its implementing regulations;
3. The provisions of Article No. 38 of the Law and Articles No. 62, 63, 65, and 67 of its implementing regulations shall be added to Article No. 36, and the provisions of Council of Ministers' Decision No. 23, dated 17/01/1428 H shall be taken into consideration;

4. The provisions of Article No. 110 of the Law's implementing regulations shall be added to the end of Article No. 37;
5. Articles No. 38 and 39 shall be amended in accordance with the provisions of Article No. 53 of the Law and the provisions of Chapter 15 of its implementing regulations; and
6. Article No. 44 shall be amended in accordance with the provisions of Article No. 43 of the Law.

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Attachment No. 3

Amendments to the Consultative Engineering Services (Supervision) and (Design) Contract Forms issued by Council of Ministers' Decision No. 259, dated 11/11/1421 H

First: Section One: Main Contract Document:

The penultimate phrase of the introduction of both forms shall be amended to refer to the Government Tenders and Procurements Law issued by Royal Decree No. M/58, dated 04/09/1427 H and its implementing regulations issued by the Minister of Finance's Decision No. 362, dated 20/02/1428 H.

Second: Section Two: General Conditions:

1. Article No. 4 in both forms shall include the conditions of the assignment of the contract to other parties provided for in Article No. 47 of the Law's implementing regulations;
2. The wording of Article No. 6-1 in both forms shall be amended as follows "The consultant shall abide by the provisions of the Government Tenders and Procurements Law and its implementing regulations";
3. Article No. 6-3 in both forms shall be amended in accordance with the provisions of Article No. 5 of the Law and Article No. 2 of its implementing regulations;
4.
 - A) Article No. 11 of the supervision contract form shall be amended in accordance with the provisions of Article No. 79 of the Law's implementing regulations in order to indicate the procedures for imposing fines in the Contract's special conditions
 - B) Article No. 11 of the design contract form shall be amended in accordance with the provisions of Article No. 80 of the Law's implementing regulations in order to indicate the procedures for imposing fines in the Contract's special conditions
5. Article No. 12 on advance payment disbursement in both forms shall be amended in accordance with Article No. 38 of the Law and Articles No. 62 and 63 of its implementing regulations as well as Item No. 1 of Council of Ministers' Decision No. 23, dated 17/01/1428 H; and
6. Notwithstanding the provisions of Articles No. 98 through 104 of the Law's implementing regulations, Article No. 19 of the supervision contract and Article No. 18 of the design contract shall be removed and the provisions of Article No. 53 of the Law shall replace them. Article No. 18 of the supervision contract and Article No. 17 of the design contract shall be reorganized in order to follow the provisions of the abovementioned Articles.

Attachment No. 4

Amendments to the Roads' Operational, Cleaning, and Maintenance Contract form issued by Council of Ministers' Decision No. 87, dated 14/03/1425 H

First: Main Contract Document:

1. The penultimate paragraph of the introduction shall be amended to refer to the Government Tenders and Procurements Law issued by Royal Decree No. M/58, dated 04/09/1427 H and its implementing regulations issued by the Minister of Finance's Decision No. 362, dated 20/02/1428 H.

Second: General Conditions:

1. The conditions for the assignment of the contract to other parties provided for in Article No. 47 of the Law's implementing regulations shall be added to Article No. 10 of the General Conditions;
2. Article No. 12 shall be amended in accordance with the provisions of Chapter 18 of the Law's implementing regulations;
3. The provisions of Article No. 38 of the Law and Articles No. 62, 63, 65, and 67 of the Law's implementing regulations shall be added to Article No. 14 of the General Conditions; and the provisions of Council of Ministers' Decision No. 23, dated 17/01/1428 H shall be taken into consideration;
4. Article No. 17 shall be amended to state "Work completion period shall be extended in accordance with the provisions of Articles No. 51 and 52 of the Law as well as the provisions of Chapter 14 of the Law's implementing regulations";
5. Article No. 25, 'First' shall be amended in accordance with the provisions of Article No. 84 of the Law's implementing regulations;
6. The provisions of Article No. 89 of the Law's implementing regulations shall be added to Article No. 25, 'Third'; and
7. The wording of Article No. 26, 'First', 'Second', and 'Third' and Article No. 27 shall be amended in accordance with the provisions of Article No. 53 of the Law and the provisions of Chapter 15 of the Law's implementing regulations.

Third: General Obligations:

1. Article No. 28, 'Fifth' shall be amended in accordance with the provisions of Article No. 33, Paragraph A of the Law;
2. The following phrase "The contractor shall review soil test reports and recommendations, but this shall not exempt the design or supervision consultant from their contractual responsibilities" shall be added to Article No. 32;

3. Article No. 48 shall be amended in accordance with Article No. 43 of the Law; and
4. The provisions of Article No. 153 of the Law's implementing regulations shall be considered in contracts executed in the vicinity of the Holy Mosques.

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