



No. 12 of 2018.

National Procurement Act 2018.

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No. 12 of 2018.

AN ACT

entitled

National Procurement Act 2018,

Being an Act to make provision for the management of national procurement (including those relating to Provincial Governments and Local-level Governments as required by the *Organic Law on Provincial Governments and Local-level Governments*) and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression and publication conferred by Section 46; and
- (c) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations conferred by Section 47; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (e) the right to reasonable privacy conferred by Section 49; and
- (f) the right of reasonable access to official documents conferred by Section 51; and
- (g) the right of freedom of movement conferred by Section 52,

is a law that is made under Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and the Basic Social Obligations, for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 53(2) of the *Constitution*, this Act is expressed to be made in the national interest.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

2. **INTERPRETATION.**

In this Act, unless the contrary intention appears -

- “APC Committee” means the Authority to Pre-commit Committee established under the PFMA;
- “Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure issued under the PFMA;
- “bid” means an offer to provide or to acquire goods, works or services or any combination thereof, and includes prequalification where applicable;
- “bidder” means a physical or artificial person intending to participate or participating in procurement proceedings;
- “bid documents” means bidding documents or any other documents submitted by bidders;
- “Chief Executive Officer” means the Chief Executive Officer appointed under Section 18;
- “citizen” means a person who is a citizen of Papua New Guinea within the meaning of the *Constitution*;
- “Code of Ethics” means the Code of Ethics specified under Section 44;
- “Commission” means the National Procurement Commission established under Section 8 but it does not include the staff of the Commission;
- “Commission Secretary” means the Commission Secretary appointed under Section 19;
- “consultancy service” means a service of an intellectual or advisory nature, provided by a person, skilled and qualified in a particular field or profession, and includes, but is not limited to, engineering or technical design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice and assistance with institutional reform;
- “contract” means an agreement between a public or statutory body and a person, resulting from the application of the appropriate and approved procurement procedures and proceedings as the case may be, and concluded in compliance with this Act;
- “Departmental Head” includes those persons who are Heads of Departments of the Public Service and those persons who are deemed, for the purpose of the *Public Services (Management) Act 2014*, to be Departmental Heads;
- “disposal” means the divestiture of public assets, including intellectual and proprietary rights and goodwill and any other rights of a public or statutory body by any means, including sale, rental, hire purchase, licence, tenancy, franchise or any other contractual means, of any type of goods, works or services or any combination of them, compliant with this Act;
- “Finance Departmental Head” has the meaning given to it in the PFMA;
- “Finance Minister” has the meaning given to it in the PFMA;
- “framework contract” means a contract that relates to the provision of common use goods, works or services;
- “General Revenue Fund” means a fund established under the PFMA and, in relation to a Provincial Government or a Local-level Government established under the *Organic Law on Provincial Governments and Local-level Governments*, means the General Revenue Fund established for that Provincial Government or Local-level Government;
- “goods” means goods, raw materials, products, equipment, livestock, assets, land or objects of any kind and description in solid, liquid or gaseous form, or in the form of electricity, or intellectual and proprietary rights as well as works or services incidental to the provision of those goods where the value of the works or services does not exceed the value of the goods;

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- “information” means written, visual, aural and electronic information;
- “National Budget” has the meaning given to it in the PFMA;
- “national company” means a company -
- (a) that is registered and operated in Papua New Guinea; and
 - (b) the shares of which are wholly owned by a citizen; and
 - (c) the capital and assets of the company are owned and located in Papua New Guinea; and
 - (d) where the directors and shareholders are all citizens;
- “National Planning Departmental Head” means the Departmental Head of the Department responsible for the administration of national planning and monitoring;
- “open bidding” means bidding that is open to tender by all persons;
- “person” means a natural person, body, authority or instrumentality (corporate or unincorporated);
- “PFMA” means the *Public Finances (Management) Act 1995*;
- “pre-qualification” means a screening process designed to ensure that invitations to bid are confined to capable providers;
- “procurement” means acquisition or disposal by purchase, rental, lease, hire purchase, licence, tenancy, franchise, or any other contractual means, of any type of goods, works or services or any combination of them, compliant with this Act;
- “Procurement Instructions” means Procurement Instructions issued under this Act;
- “public asset” means any real or personal property, tangible or intangible, owned, in whole or in part, by a public or statutory body;
- “public body” has the meaning given to it in the PFMA;
- “public funds” has the meaning given to it in the PFMA;
- “public property” has the meaning given to it in the PFMA;
- “Public Service Minister” means the Minister designated by the Prime Minister and published in the National Gazette with respect to the allocation of ministerial duties and responsibilities of Ministers under Section 148 of the *Constitution*, to be the Minister responsible for the administration of the *Public Services (Management) Act 2014*;
- “RSA Act” means the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*;
- “SCMC Act” means the *Salaries and Conditions Monitoring Committee Act 1988*;
- “services” means any object of procurement other than goods or works, and includes professional, nonprofessional and commercial types of services as well as goods or works which are incidental to, but not exceeding the value of those services;
- “specifications” means the description of an object of procurement in accordance with national and international standards specified in the bidding documents;
- “statement of requirements” means a statement of requirements under Section 49;
- “statutory body” has the meaning given to it in the PFMA;
- “Technical and Financial Evaluation Committee” means a Technical and Financial Evaluation Committee established under this Act;
- “tender” includes “bid” and vice versa;
- “tender documents” means all documents that are intended for release as part of a tender;
- “TFEC” means a Technical and Financial Evaluation Committee;
- “the Consolidated Revenue Fund” means the fund established by the PFMA;
- “threshold limit” means the threshold limits established under this Act;
- “Treasurer” has the meaning given to it in the PFMA;
- “Treasury Departmental Head” has the meaning given to it in the PFMA;
- “Trust Account” means a Trust Account established under the PFMA;

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“works” means -

- (a) any work associated with the construction, reconstruction, demolition, repair, or renovation of a building or structure, on the surface or underground, on and underwater; or
- (b) the preparation, excavation, erection, assembly, installation, testing and commissioning of any plant, equipment or materials, decoration and finishing, turnkey projects, build-own-and-operate projects, build-operate-and-transfer projects or any arrangement of this nature; or
- (c) any other form of private and public partnerships or joint development activities, which may include management, maintenance, testing, commissioning and training; or
- (d) goods or services incidental to those works where the value of the incidental goods or services does not exceed the value of the works.

3. REFERENCES TO OTHER ACTS.

A reference to this Act or any other Act includes -

- (a) any regulations or lawfully made administrative arrangements made under this Act or any other Act; and
- (b) any Act that is substituted for or that replaces that other Act; and
- (c) any regulations made under any such substitute or replacement Act.

4. ACT BINDS THE STATE.

This Act binds the State.

5. APPLICATION TO PUBLIC AND STATUTORY BODIES.

(1) Subject to this section, this Act applies to all procurement activities by public and statutory bodies, within the meaning of the PFMA, irrespective of the source of the funding for the procurement activities.

(2) This Act binds constitutional institutions and constitutional institutions shall be deemed to be statutory bodies for the purposes of this Act.

6. APPLICATION TO BOUGAINVILLE GOVERNMENT.

(1) Subject to this section, this Act applies to the Bougainville Government established under Part XIV of the *Constitution*.

(2) The Bougainville Government is subject to the provisions of this Act that apply to public bodies and this Act shall be interpreted accordingly.

(3) The Minister for Finance by notice published in the National Gazette, when satisfied that the Bougainville Government has legally adopted and operationalised laws efficiently and transparently managing procurement, may exempt the Bougainville Government, in whole or part and subject to such conditions as he thinks fit, from the application of this Act.

7. APPLICATION TO INTERNATIONAL AGREEMENTS.

(1) In this section, “agreement” includes an agreement, treaty, convention, loan or negotiated grant, that comply with the laws of Papua New Guinea, that has been entered into by the State.

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(2) Where this Act conflicts with or is inconsistent with an obligation or undertaking of the State arising out of an agreement with one or more states, or with an international organisation, the provisions of the agreement shall prevail over the provisions of this Act in order that the terms of the agreement are given full force and effect.

(3) Where an agreement referred to in this section contains a preference or preferences in favour of national and resident providers, the applicable preference or preferences shall be clearly stated in the bidding documents.

(4) Where an agreement contains a condition that the provider shall originate from the country of the donor, procurement of the provider shall be in accordance with the agreement.

(5) Where there is a conflict between this Act, regulations made under this Act or guidelines, instructions or the like issued pursuant to this Act and a condition imposed by an agreement, the conditions of the agreement shall prevail with respect to the procurement that uses the funds.

(6) Subsection (2) applies to agreements between the State and with one or more states, or with an international organisation, existing at the date of commencement of this Act and all agreements entered into after that date.

PART II. - ESTABLISHMENT, FUNCTIONS AND POWERS, ETC., OF THE NATIONAL PROCUREMENT COMMISSION.

8. ESTABLISHMENT OF THE NATIONAL PROCUREMENT COMMISSION.

(1) The National Procurement Commission is hereby established.

(2) The Commission -

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) shall have a common seal; and
- (d) may acquire, hold and dispose of property; and
- (e) may sue and be sued in its corporate name and style.

(3) The common seal of the Commission shall be kept in such custody as the Commission directs and shall not be used except by resolution of the Commission or in such other manner as is authorised by law.

(4) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

9. FUNCTIONS OF THE COMMISSION.

(1) Subject to this Act, the National Procurement Commission shall undertake procurements on behalf of the State, including public and statutory bodies.

(2) Subject to this section, the functions of the Commission are to -

- (a) undertake timely, fair, competitive, transparent, non-discriminatory and value for money procurements for and on behalf of the State including public and statutory bodies; and
- (b) build procurement capacity in Papua New Guinea; and
- (c) maintain a register of providers of goods, works or services; and
- (d) advise the private sector on all public procurement policies, principles and practices; and

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- (e) monitor and report on the performance of the procurement system and contract management by public and statutory bodies and advise on desirable changes; and
- (f) advise competent authorities on standards for procurement education and training, competence levels and certification requirements; and
- (g) prepare, update and issue standardised bidding documents, guidelines, common specifications standards, procedural forms and any other attendant documents; and
- (h) organise and maintain a system for the publication of data on procurement opportunities, awards and any other information of public interest; and
- (i) conduct periodic inspections of the records and proceedings of certified public and statutory bodies to ensure full and correct application of this Act; and
- (j) establish and maintain institutional linkages with entities with professional and related interest in procurement; and
- (k) undertake procurement research and surveys; and
- (l) undertake any activity which may be necessary for the execution of its functions; and
- (m) assist the APC Committee to administer and enforce compliance with all the provisions of this Act, regulations and guidelines issued under this Act; and
- (n) create, staff and operationalise provincial offices of the Commission in every province sufficient to meet the procurement needs and requirements of the public and statutory bodies located in the province.

(3) The staff of the Commission may attend meetings of the Board of the Commission only when so directed by the Board of the Commission.

(4) Where there is persistent or serious failure to comply with this Act or regulations, instructions or guidelines made under this Act by any person within a public or statutory body, the Commission may -

- (a) direct the concerned public or statutory body to take such corrective action as may be necessary in the circumstances to rectify the failure to comply; or
- (b) recommend to the APC Committee to suspend, in whole or part, any certification granted under this Act to that public or statutory body.

(5) Recommendations pursuant to Subsection (4) shall be communicated to the Auditor-General and the State Solicitor by the Commission and the APC Committee shall communicate to them the decisions and actions taken based on those recommendations.

10. POWERS OF THE COMMISSION.

(1) The Commission has, in addition to the powers otherwise conferred on it by this Act and any other law, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

- (2) Without limiting the generality of Subsection (1), the Commission has power -
 - (a) to acquire, purchase, hold and dispose of real and personal property; and
 - (b) to grant, sell, alienate, assign and demise public property; and
 - (c) to do all other matters and things incidental or appertaining to a statutory body; and
 - (d) to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

PART III. - ESTABLISHMENT, FUNCTIONS AND POWERS, ETC., OF THE BOARD.

11. ESTABLISHMENT OF THE BOARD.

There shall be a Board of the Commission.

12. POWERS AND FUNCTIONS OF THE BOARD.

(1) The Board shall approve and award all contracts for procurements facilitated by the Commission.

(2) The Board shall examine and consider the recommendations of a TFEC to approve and award contracts.

(3) The Board, in the exercise of its powers and performance of its functions, is not bound by the recommendations of a TFEC, but if it does not adopt those recommendations, it shall provide the TEFC and the relevant public or statutory body with justifiable reasons for not following the recommendations of the TFEC.

(4) All contracts approved and awarded by the Board shall be executed by the Chairperson of the Board in the following:

- (a) in the case of a public body, in the name of the State; and
- (b) in the case of a statutory body, in the name of the statutory body.

(5) Contracts executed by the Chairperson of the Board are binding on the State or the statutory body, respectively.

(6) Contracts with a value in excess of K10,000,000.00, or such other higher amount as may be approved by the National Executive Council, shall be approved and awarded by the National Executive Council, upon the recommendation of the Board and shall be executed by the Head of State, acting on the advice of the National Executive Council.

(7) A contract shall not be executed under this section unless the contract has first received the legal clearance, in writing, from the State Solicitor that -

- (a) the procurement was conducted in compliance with this Act; and
- (b) the contract complies with all laws in force in Papua New Guinea; and
- (c) the contract adequately protects the interests of the relevant public or statutory body.

13. MEMBERSHIP OF THE BOARD.

(1) The Board comprises of the following members:

- (a) the State Solicitor *ex officio* or his delegate; and
- (b) the Finance Departmental Head *ex officio* or his delegate; and
- (c) the Departmental Head of the Department responsible for works matters *ex officio* or his delegate; and
- (d) subject to this section, three persons appointed pursuant to the RSA Act from nominations from each of the organisations representing the interests of -
 - (i) engineers; and
 - (ii) business or accountants; and
 - (iii) civil society; and
- (e) an independent person, nominated by the Finance Minister and approved and appointed by the National Executive Council, who has an unimpeachable and impeccable reputation and relevant experience or demonstrated understanding of commercial, procurement or contracting practices.

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(2) The Finance Minister shall, by notice published in the National Gazette, specify the organisations in Subsection (1)(d).

(3) An organisation specified in Subsection (2) shall nominate to the Finance Minister three persons who have, in the opinion of the organisation, unimpeachable and impeccable reputations and have relevant experiences or demonstrated understanding of law, commerce, procurement and contracting practices for appointment to any position in the Board.

(4) The members in Subsection (1)(d) -

- (a) shall be appointed in accordance with the RSA Act; and
- (b) shall be appointed for a period of three years; and
- (c) are eligible for re-appointment for not more than two terms.

(5) A person appointed in Subsection (1)(e) -

- (a) shall be appointed by notice published in the National Gazette; and
- (b) shall be appointed for a period of three years commencing on the date specified in the notice; and
- (c) holds office upon such terms and conditions as are determined by the National Executive Council by notice published in the National Gazette; and
- (d) is eligible for re-appointment for not more than two terms.

(6) The Finance Minister may terminate the appointment of a member appointed under Subsection (1)(e) -

- (a) for ill health, incompetence or impropriety; and
- (b) only after the receipt by him of a report from the Commission on the reason for the proposed termination.

14. CHAIRPERSON OF THE BOARD.

(1) A member of the Board shall be appointed by the Head of State, acting on advice of the National Executive Council, upon recommendation of the Finance Minister, to be the Chairperson of the Board.

(2) The Chairperson of the Board shall be a non-executive Chairperson with no role, powers or functions in the day to day operations of the Commission, and shall be paid a sitting allowance determined under the SCMC Act.

15. MEETINGS OF THE BOARD.

(1) At a meeting of the Board -

- (a) the Chairperson or, in his absence, a person appointed by the members from their number as chairperson for that meeting, shall preside; and
- (b) matters arising shall be decided by a majority of the votes of the members present; and
- (c) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(2) The quorum shall be four members of whom at least one shall be a member appointed pursuant to Subsection (1)(d) or (e), and no more than two are delegates of members.

(3) The procedures of the meeting are as determined by the Board.

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16. DISCLOSURE OF INTEREST.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board and the disclosure shall be recorded in the minutes of the meeting.

- (2) The Board member making the disclosure shall -
- (a) not participate, after the disclosure, in any debate, deliberation, decision or vote of the Board in relation to the matter during the meeting at which the disclosure is made or at any other meeting of the Board, and
 - (b) be disregarded for the purpose of determining whether a quorum is present.

17. VACANCY IN MEMBERSHIP OF THE BOARD.

(1) A member of the Board of the Commission, other than an *ex officio* member, may resign his office by writing, signed by him and delivered to the Finance Minister.

- (2) Where a member -
- (a) dies or resigns his office; or
 - (b) becomes of unsound mind; or
 - (c) becomes permanently incapable of performing his duties; or
 - (d) is absent, without the written consent of the Board of the Commission, from three consecutive meetings of the Board of the Commission; or
 - (e) fails to comply with this Act; or
 - (f) becomes bankrupt or insolvent; or
 - (g) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result of the conviction is sentenced to imprisonment; or
 - (h) is removed from Office due to incompetence or impropriety,
- the Finance Minister may, by written notice, terminate his appointment in accordance with relevant laws.

(3) A vacancy in the membership of the Board and the office of the Chairperson shall be filled as soon as practicable and in any event, within three months of the vacancy arising.

(4) When there is a vacancy in the position of the Chairperson, the National Executive Council shall appoint a member of the Board to act as Chairperson until such time a person is appointed as Chairperson by the Head of State, acting on advice.

PART IV. - STAFF OF THE COMMISSION.

18. CHIEF EXECUTIVE OFFICER.

(1) A person shall be appointed pursuant to the terms of the RSA Act to be Chief Executive Officer of the Commission.

- (2) The Chief Executive Officer shall be responsible for -
- (a) the daily management, business and operations of the Commission; and
 - (b) administration, organisation and control of the officers and staff of the Commission; and
 - (c) promoting, training and disciplining of the officers and staff of the Commission in accordance with their terms and conditions of employment; and
 - (d) oversight of the performance of the functions of the Commission; and
 - (e) advising the Board of the Commission and implementing decisions on any matter concerning the Commission referred to him by the Board of the Commission.

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(3) The Chief Executive Officer has no role or function in respect of the Technical and Financial Evaluation Committee decisions and shall not in any way seek to influence those decisions.

(4) The Chief Executive Officer shall not engage in any business, profession, occupation or paid employment elsewhere other than with the Commission.

(5) The Chief Executive Officer shall be -

(a) subject to directions from the Board; and

(b) appointed for a term of three years and is eligible for re-appointment.

(6) The remuneration, including all allowances of the Chief Executive Officer shall be determined under the SCMC Act.

(7) The Chief Executive Officer may be dismissed or suspended from office only pursuant to his contract of employment and the RSA Act.

(8) The Office of the Chief Executive Officer becomes vacant if the person holding the office -

(a) dies; or

(b) resigns; or

(c) is not re-appointed at the end of a term of office; or

(d) is removed from office pursuant to his contract of employment and the RSA Act.

(9) A vacancy in the Office of the Chief Executive shall be filled as soon as practicable, after the vacancy arises.

19. COMMISSION SECRETARY.

(1) The Chief Executive Officer shall appoint a person to be the Commission Secretary.

(2) The Commission Secretary shall provide secretarial and other related support to the members of the Board and is responsible for convening meetings of the Board and for recording minutes of the meetings.

(3) The Commission Secretary shall not engage in any business, profession, occupation or paid employment elsewhere other than with the Commission.

(4) The Commission Secretary may be removed from office only pursuant to the terms of their employment contract.

(5) The remuneration, including all allowances of the Commission Secretary shall be determined under the SCMC Act.

20. STAFF OF THE COMMISSION.

(1) Subject to any other laws in force in Papua New Guinea, the Chief Executive Officer shall appoint the staff of the Commission, in accordance with procedures established, approved and determined by the Board.

(2) The appointment of staff, as may be required for the performance of the functions of the Commission, are on such terms and conditions of service as determined under the SCMC Act.

(3) The Board shall determine the terms and conditions of service of the staff of the Commission, other than the terms and conditions of service determined under the SCMC Act.

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(4) The Chief Executive Officer shall execute contracts of employment of the staff of the Commission.

(5) Staff of the Commission shall be posted in each province so as to better serve the procurement needs and requirements of public and statutory bodies within each province.

(6) Where an officer of the public service is appointed to the staff of the Commission, service on the staff of the Commission shall be counted as service in the Public Service for the purpose of determining rights, if any, in respect of -

(a) leave of absence on the grounds of illness; and

(b) furlough or pay instead of furlough (including pay to dependants on the death of the officer).

(7) The staff of the Commission may be removed from office only pursuant to the terms of their employment contract.

(8) Where an officer of the public service appointed to the staff of the Commission is removed from office under this section, the officer shall be returned to the public service.

(9) The Chief Executive Officer and the officers appointed under this section constitute the staff of the Commission.

PART V. - FINANCES OF THE COMMISSION.

21. FUNDS OF THE COMMISSION.

The funds of the Commission shall consist solely of the amount annually appropriated by Parliament for the purposes of the Commission.

22. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995.*

The PFMA applies to the Commission.

23. SUBMISSION OF ANNUAL MANAGEMENT PLAN, ETC.

The Chief Executive Officer shall, no later than three months before the end of each financial year, prepare and submit to the Board an annual management plan and fiscal estimates for its approval for the next financial year.

24. BUDGET ESTIMATES.

The Commission shall provide budget estimates approved by the Board to the Treasurer in compliance with the requirements of the PFMA.

PART VI. - POST NATIONAL BUDGET PROCUREMENT PLANNING.

25. POST NATIONAL BUDGET PROCUREMENT PLANNING.

(1) After the passage of the National Budget by Parliament, or any supplementary National Budget, public and statutory bodies that have received appropriations in the National Budget, supplementary National Budget or which are otherwise financed by sources outside of the National Budget, shall, as soon as reasonably practicable, submit to the APC Committee their procurement plans for all procurements within the jurisdiction of the Commission.

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- (2) A post National Budget procurement plan shall include details of -
 - (a) the total amount of funds required for the procurement; and
 - (b) a schedule of the dates at which the funds will be required to meet expected contractual obligations; and
 - (c) the current state of bid preparedness, including the technical and related specifications and the timing of all procurement steps; and
 - (d) such other details as the APC Committee may from time to time require.

- (3) Public or statutory bodies shall plan annual procurement that has been appropriated in the National Budget in a rational manner and in particular shall -
 - (a) aggregate its requirements where possible to obtain value for money and to reduce procurement costs; and
 - (b) seek to make use of framework contracts wherever appropriate to provide an efficient, cost effective and flexible means to procure goods, works or services that are required continuously or repeatedly over a set period of time; and
 - (c) not split a procurement to defeat the use of the appropriate procurement method or to avoid the jurisdiction of the Commission; and
 - (d) integrate the disposal of assets, both listed and unlisted, in its assets register as well as in its income and expenditure budget.

- (4) The APC Committee shall issue instructions under this Act in respect of the format of the post National Budget procurement plan to be prepared under this section.

- (5) A public or statutory body shall, on a quarterly basis and as required by the APC Committee, review and update its post National Budget procurement plan and re-submit it pursuant to Subsection (2).

- (6) On receipt of a post National Budget procurement plan by the APC Committee, it shall -
 - (a) reject the post National Budget procurement plan if required details have not been provided; or
 - (b) incorporate the post National Budget procurement plan into a consolidated post National Budget procurement plan of all submitted post National Budget procurement plans.

- (7) The APC Committee shall display the consolidated procurement plan referred to in Subsection (6), including updates and revisions using such methods as it thinks fit, on a continuous basis so that it may be publicly consulted, except that information which is commercially sensitive.

- (8) The Commission or public and statutory bodies shall not commence or continue any procurement within the jurisdiction of the Commission unless -
 - (a) a post National Budget procurement plan has been submitted to the APC Committee; and
 - (b) the APC Committee has advised and certified to the Commission and the public or statutory body that funds are available for that procurement.

PART VII. - PROCUREMENT THRESHOLDS AND CAPACITY LIMITATIONS.

26. PROCUREMENT THRESHOLDS.

- (1) The procurement thresholds for all public and statutory bodies are -
- (a) the threshold level for minor procurements below which public and statutory bodies may procure themselves using a simplified procurement system approved by the Commission, is not more than K5,000.00; and
 - (b) the threshold level below which public and statutory bodies may procure themselves using a standardised procurement system approved by the Commission is from K5,001.00 to K500,000.00; and
 - (c) the threshold level above which public and statutory bodies shall not procure themselves but shall have procurements undertaken on their behalf by the Commission is above K500,000.00; and
 - (d) in the case of a Provincial Committee of the Commission, not exceeding K5,000,000.00 the threshold level below which a Provincial Committee of the Commission, may procure itself using a standardised procurement system approved by the Commission is K5,000,000.00; and
 - (e) in the case of a District Committee of the Commission, procuring themselves, using a standardised procurement system approved by the Commission, the threshold level is K2,500,000.00.

(2) Public and statutory bodies shall comply with the thresholds established under this Act and with the requirements of the procurement systems established by the Commission for the respective thresholds.

(3) Any contract entered or purported to be entered into by a public or statutory body contrary to this section is void from the moment of execution of the contract.

(4) No damages, compensation or any other entitlement or relief, whether legal or equitable, shall be awarded by any court of competent jurisdiction under or in respect of any contract that is void pursuant to this section.

(5) Where -

- (a) a procurement threshold under this part requires that a procurement of a Provincial or Local-level Government or of a District Development Authority be undertaken on their behalf by the Commission; and

(b) the procurement will result in a contract to be executed over multiple years, the head of the administration of the Provincial or Local-level Government or District Development Authority, as the case may be, shall take such steps as are necessary to reasonably ensure that in respect of every year in which the contract is to be executed that it has appropriated or otherwise budgeted as a first priority for sufficient funds to meet the financial costs to be incurred in each of those financial years.

27. PROCUREMENT CAPACITY REQUIREMENT.

(1) This section commences on a date to be fixed by the Head of State, acting on the advice of the National Executive Council, by notice published in the National Gazette.

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(2) Public and statutory bodies shall not engage in any procurement within the thresholds established under Section 26 unless they have been certified by the APC Committee, in consultation with the Commission, that they have the capacity to engage in procurement processes that is sufficient in order to protect the use of public funds and ensure that good public financial management practices are followed and applied by the public or statutory body.

(3) The APC Committee shall, by notice published in the National Gazette, specify the requirements to be met that establish that a public or statutory body has capacity to engage in procurement processes that is sufficient in order to protect the use of public funds and ensure that good public financial management practices are followed and applied by the public or statutory body.

(4) The Commission shall undertake certified procurements under Subsection (2) on behalf of the public or statutory body.

(5) Where the Commission undertakes a procurement on behalf of a public or statutory body under this section, that public or statutory body shall assign to the Commission such number of its staff as are necessary to both work with the Commission on the procurement and enhance the procurement capacity of those officers in respect of procurement matters.

(6) Any contract entered or purported to be entered into by a public or statutory body contrary to Subsection (2) is void from the moment of execution of the contract.

(7) No damages, compensation or any other entitlement or relief, whether legal or equitable shall be awarded by any court of competent jurisdiction under or in respect of any contract that is void pursuant to this section.

(8) Prior to the commencement of this section, public and statutory bodies may engage in any procurement within the thresholds established pursuant to Section 26.

28. CERTIFICATION OF PROCUREMENT CAPACITY.

(1) A public or statutory body shall apply for certification of procurement capacity pursuant to this part by supplying to the APC Committee evidence satisfactory to the APC Committee -

- (a) that for the last three financial years prior to the date of application, no issues have been raised in respect of any procurements undertaken by the public or statutory body that have not been resolved to the satisfaction of the APC Committee; and
- (b) the names and procurement experience, training and qualifications of all of the staff of the public or statutory body that are to engage in procurement processes; and
- (c) in compliance with the requirements specified in Section 27(2).

(2) The APC Committee shall consult the Commission for its advice and views in respect of any application under this section, but the APC Committee is not bound by the advice or views of the Commission.

(3) A public or statutory body may be certified by the APC Committee as having capacity to undertake procurements, subject to such terms and conditions and for such period as the APC Committee thinks fit.

(4) A public or statutory body certified pursuant to this section shall undertake procurements in accordance with the terms and conditions of that certification.

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(5) A certification under this section, expires three years from the date of certification and may be renewed.

(6) A certification under this section shall not be renewed unless the public or statutory body applying for renewal supplies to the APC Committee evidence, satisfactory to the APC Committee, of its audits for the last three financial years prior to the date of application for renewal that demonstrate that no issues were raised by the auditors in respect of any procurements undertaken by the public or statutory body that have not been resolved to the satisfaction of the auditors.

PART VIII. - TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

29. APPOINTMENT OF TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

For each procurement the Commission undertakes for and on behalf of a public or statutory body, the Chief Executive Officer, for and on behalf of the Commission, shall appoint a TFEC.

30. PROCUREMENT FOR THE PURPOSES OF THE COMMISSION.

The Commission shall carry out procurements for the purposes of the Commission which are above the threshold limit specified in Section 26.

31. COMPOSITION OF A TFEC.

(1) Subject to Subsection (2), a TFEC shall consist of the following members:

- (a) at least one person appointed by the public or statutory body on whose behalf a procurement is being undertaken, who shall be the Chairman of the Committee; and
- (b) a member of staff of the Commission with competence and experience in the administrative management of procurements for public and statutory bodies appointed by the Chief Executive Officer; and
- (c) a person nominated by the departmental head of the department responsible for works; and
- (d) a lawyer appointed by the State Solicitor; and
- (e) an accountant appointed by the Finance Departmental Head; and
- (f) such other persons who, in the opinion of the Chief Executive Officer, have the necessary technical or financial skills required for the technical or financial assessment of the procurement.

(2) The Chief Executive Officer may co-opt advisers to assist a TFEC in the discharge of its functions.

(3) The tenure of the members of a TFEC shall for the period necessary to complete the technical and financial evaluation of the subject procurement and report to the Commission.

(4) A person may be a member of more than one TFEC.

32. FUNCTIONS OF A TFEC.

(1) A TFEC shall be responsible for -

- (a) approving all technical and financial documentation to be released as part of a procurement; and
- (b) ensuring that the technical and financial evaluation of a procurement is undertaken promptly and in accordance with the requirements of the Commission and the APC Committee in accordance with the approved post National Budget procurement plan; and
- (c) approving compliance with tender documents in respect of the procurement under technical and financial evaluation; and

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- (d) approving compliance with procurement procedures in respect of the procurement under technical and financial evaluation; and
- (e) ensuring that best practices in relation to procurement are strictly complied with during the technical and financial evaluation of the procurement; and
- (f) ensuring compliance with this Act in respect of the technical and financial evaluation; and
- (g) liaising directly with the Commission on matters regarding a procurement.

(2) A TFEC shall, at the conclusion of its technical and financial evaluation of a procurement or at such other times as the Board of the Commission requires, make a report in respect of its activities under Subsection (1) and submit the report to the Board of the Commission.

- (3) A TFEC shall -
- (a) recommend to the Commission the procurement procedure appropriate for the procurement; and
 - (b) develop, in consultation with the relevant public or statutory body, solicitation or other procurement documents, for approval by the Commission; and
 - (c) undertake technical and financial evaluations of a procurement and develop recommendations for contract awards to the Commission.

33. SECRETARIAL SUPPORT TO TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

The Chief Executive Officer shall -

- (a) administratively support the functioning of Technical and Financial Evaluation Committees; and
- (b) provide secretarial support to the Technical and Financial Evaluation Committees; and
- (c) prepare advertisements of bid opportunities; and
- (d) issue bidding documents; and
- (e) maintain a service providers list; and
- (f) prepare contract documents, in line with the instructions and advice of the State Solicitor; and
- (g) issue contract documents approved by the State Solicitor; and
- (h) maintain and archive records of procurements; and
- (i) prepare any other such reports as may be required from time to time.

34. RELATIONSHIP OF PUBLIC AND STATUTORY BODIES TO TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

(1) In respect of a procurement for a public or statutory body, the functions of the public or statutory body are -

- (a) to liaise with and assist the TFEC throughout the procurement to the point of recommendations being made by the TFEC; and
- (b) to initiate procurement and forward the procurement requirements to the TFEC; and
- (c) to propose technical inputs to statements of requirements for procurement requirements to the TFEC; and
- (d) to propose technical specifications to the TFEC when necessary; and
- (e) to report any departure from the terms and conditions of an awarded contract to the Commission; and
- (f) to forward details of any required contract amendments to the Commission for action; and
- (g) to maintain and archive records of contracts management; and

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(h) to prepare any reports required for submission to the Commission.

- (2) In the exercise of its functions, a public or statutory body shall -
- (a) initiate procurement requirements; and
 - (b) recommend statements of requirements to the TFEC; and
 - (c) undertake conformity assessments; and
 - (d) issue change orders in accordance with the terms and conditions of the contract; and
 - (e) certify invoices for payments to providers.

35. TECHNICAL AND FINANCIAL EVALUATION COMMITTEES INDEPENDENT PERFORMANCE OF FUNCTIONS.

(1) Subject to this Act, Technical and Financial Evaluation Committees shall act independently in relation to the performance and discharge of their functions.

(2) A person shall not, directly or indirectly, by any means, seek to influence or direct in any way a TFEC or its members, in the independent performance and discharge of its functions.

36. PROCUREMENT RECORDS.

(1) The Commission and public or statutory bodies shall maintain records on its procurement proceedings for a period of seven financial years after the last payment was made or the contract otherwise completed.

(2) The records to be maintained under Subsection (1) shall include a summary report of the procurement procedure used in respect of each contract, which shall indicate -

- (a) a description of the objectives of the respective procurement; and
- (b) a list of the participating bidders; and
- (c) the bid prices; and
- (d) the bid evaluation criteria; and
- (e) a summary of the evaluation and comparison of bids, including the grounds for rejecting any of the bids; and
- (f) where applicable, a summary of the proceedings of the administrative reviews including the decisions taken; and
- (g) a statement of the grounds for cancellation of procurement proceedings; and
- (h) any other information determined by the rules.

(3) The records of the procurement process shall be open to inspection by the Commission or the APC Committee.

(4) Procurements shall be recorded using the standard forms issued by the Commission to record all details of procurements.

(5) The Commission shall -

- (a) cause to be published -
 - (i) details of all contracts awarded in the prior six months; and
 - (ii) the name of the contractor; and
 - (iii) the value of the contract; and
 - (iv) the subject matter of the contract,at the middle and end of every financial year; and
- (b) identify in respect of each procurement whether the recommendations of the TFEC were followed.

37. DEFENCE AND SECURITY RELATED PROCUREMENTS.

(1) Subject to this Act, procurements which are defence or internal or external national security related, shall comply with this Act.

(2) The National Executive Council may, in exceptional circumstances, declare, certify and direct that a procurement is so sensitive in terms of its defence or internal or external national security aspects that -

- (a) all records of the procurement are to be held secure and confidential even after the contract for the procurement has been awarded; and
- (b) the method of procurement shall be such as is determined by the Board of the Commission.

PART IX. - PROCUREMENT PRINCIPLES.

38. APPLICATION OF PROCUREMENT PRINCIPLES.

All procurements shall be conducted in accordance with the following principles:

- (a) non-discrimination; and
- (b) transparency, accountability and fairness; and
- (c) maximisation of competition and ensuring value for money; and
- (d) confidentiality; and
- (e) economy and efficiency; and
- (f) promotion of ethics.

39. NON-DISCRIMINATION.

A bidder shall not be excluded from participating in a procurement on the basis of nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.

40. TRANSPARENCY, ACCOUNTABILITY AND FAIRNESS.

All procurements shall be conducted in a manner which promotes transparency, accountability and fairness.

41. COMPETITION.

(1) Subject to this Act, all procurements shall be conducted in a manner to maximise competition and a socio-economic return on investment that achieves value for money.

(2) Subject to this Act, all procurements shall be the subject of public bid.

42. TRANSPARENCY AND CONFIDENTIALITY.

(1) The Commission and public or statutory bodies shall, upon written request by any person, disclose all available information regarding any procurement or intended procurement.

(2) Notwithstanding Subsection (1) -

- (a) a person not involved in the preparation of bid documents, the evaluation process or the award decision, shall not be provided with any information relating to -
 - (i) the bid documents, before the bid documents are officially issued; or
 - (ii) the bid evaluation before the publication of the bid evaluation; or
- (b) information shall not be disclosed under this section where, in the opinion of the Commission -
 - (i) the disclosure is likely to prejudice the security or sovereignty of the State; or
 - (ii) the disclosure would amount to a breach of the law, impede law enforcement or would not be in public interest; or

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- (iii) it contains proprietary information including information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law or by international treaty to which Papua New Guinea is a party; or
- (iv) scientific or technical information, the disclosure of which is likely to cause harm to the interests of the proper functioning of any public or statutory body; or
- (v) information supplied in confidence by a bidder, the disclosure of which could reasonably be expected to put that bidder at a disadvantage in contractual commercial negotiations or to prejudice the bidder in commercial competition.

43. ECONOMY AND EFFICIENCY.

All procurements shall be conducted in a manner which promotes economy and efficiency.

44. CODES OF ETHICS.

All procurements shall be carried out in accordance with the Codes of Ethics which may be established, from time to time, by the Commission.

PART X. - PROCUREMENT INSTRUCTIONS, ETC.

45. PROCUREMENT INSTRUCTIONS, ETC.

(1) All procurements shall be carried out in accordance with this Act, the regulations, guidelines and instructions issued under this Act.

(2) The Commission may issue Procurement Instructions or Guidelines, not inconsistent with this Act, which are necessary or desirable for carrying out or giving effect to this Act and in general for the better control and management of procurement.

(3) The Commission may issue procurement manuals, not inconsistent with this Act, for instruction and guidance on the implementation of any matter provided for in this Act for the better control and management of procurement.

(4) All persons shall comply with the terms, conditions, requirements and instructions of Procurement Instructions or Guidelines and procurement manuals issued under this section.

46. COMMUNICATIONS.

All communications relating to a procurement shall be in writing and directed solely to the Commission and communications in any other form shall be referred to and confirmed in writing.

PART XI. - PREFERENCE AND RESERVATION.

47. NATIONAL PREFERENCE ALLOWANCE.

(1) Procurement of goods, works or services under this section, shall grant a margin of preference to national companies and citizens with capacity to undertake or provide the goods, works or services -

- (a) of 15 percent, in respect of goods; and
- (b) of 7 percent, in respect of works or services.

(2) A joint venture or an association between a national company or citizen with capacity to undertake or provide the goods, works or services and a foreign partner shall be granted a margin of preference of 4 percent for goods, works or services.

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(3) A joint venture or an association between a national company or citizen with capacity to undertake or provide the goods, works or services and a foreign partner shall only be eligible for preference where -

- (a) the joint venture is registered in Papua New Guinea; or
- (b) the national company or citizen demonstrates a beneficiary interest of more than 50 percent in the joint venture as demonstrated by the profit and loss sharing provisions of the joint venture agreement.

48. NATIONAL RESERVATIONS AND RESTRICTIONS.

(1) All procurements which relate in whole or in part to the activities reserved for citizens under the Regulations under the *Investment Promotion Act 1992*, shall be reserved or restricted to citizens so as to promote the engagement of national companies and citizens in the provision or sale of goods, works or services to the State.

(2) Notwithstanding Subsection (1), the Commission shall ensure that, as far as is reasonably practicable, all procurements promote and maximise -

- (a) the use of local expertise and materials; and
- (b) the participation of local communities or organisations; and
- (c) the application of appropriate, sustainable and cost effective technologies.

(3) A procurement -

- (a) with a value estimated by the Commission of up to K10,000,000.00, shall have a technical evaluation requirement that it is open to public tender only by national companies and citizens with capacity to undertake or provide the goods, works or services; and
- (b) with a value estimated by the Commission of greater than K10,000,000.00, but less than K30,000,000.00, shall have a technical evaluation requirement that it is open to public tender only
 - (i) so that at least 50 percent of the value of the procurement is to be undertaken by national companies and citizens, with capacity to undertake or provide the goods, works or services; or
 - (ii) in the case of a partnership, so that at least 50 percent of the partnership is held by national companies and citizens with capacity to undertake or provide the goods, works or services; and
- (c) with a value estimated by the Commission of equal to or greater than K30,000,000.00 shall have a technical evaluation requirement that it is open to public tender by all companies and persons.

(4) Procurements specified in Subsection (3)(a) or (b) shall, if the lowest priced bid is equal to or greater than 10 percent more than the contract estimate fixed by the Commission, be cancelled and the procurement shall be retendered with a technical evaluation requirement that it is open to public tender by all companies and persons, without any limitation.

PART XII. - SPECIFICATIONS AND STANDARDS.

49. STATEMENTS OF REQUIREMENTS.

(1) All procurements shall be accompanied by a statement of requirements which consists of, as may be relevant for the procurement -

- (a) specifications; or
- (b) terms of reference; or
- (c) scope of works; or

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- (d) drawings; or
- (e) bills of quantities; or
- (f) other information as may be appropriate.

(2) A statement of requirements shall give a correct and complete description of the object of the procurement activity for the purpose of creating fair and open competition.

(3) The Commission shall provide such assistance as is necessary to a public or statutory body to develop the statement of requirements for a procurement.

50. APPLICATION OF INDUSTRY STANDARDS.

Procurements shall at all times use industry standards defined and codified by internationally recognised trade associations and professional bodies in the appropriate fields.

51. TENDER DOCUMENT TRANSPARENCY.

(1) All tender documents shall -

- (a) detail the terms and conditions which shall apply to any resulting contract; and
- (b) contain the general conditions of contract, or a statement of the general conditions of contract,

cleared by the State Solicitor, which shall apply.

(2) The general conditions of contract shall not be modified except through special conditions, cleared by the State Solicitor and inserted into the tender documents or contract.

52. SELECTION OF BIDDERS.

All methods for the selection of bidders to be invited to bid shall allow for fair and equitable selection and ensure maximum competition in accordance with the Procurement Instructions.

53. BIDDING PERIOD.

The bidding period for a procurement shall be fixed by the Commission and shall be sufficient to allow bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition.

54. CLARIFICATION OF TENDER DOCUMENTATION.

(1) At any time prior to the deadline for bid submission, the Commission may, on its own initiative, or in response to a request for clarification by a bidder, modify the tender documents by issuing an addendum.

(2) Where the Commission considers it necessary, it may extend the closing date to enable bidders to take the addendum fully into account while preparing their bids.

55. DELIVERY OF BID DOCUMENTS.

(1) All bids, technical and financial, shall be delivered to the Commission in sealed envelopes or otherwise secured from inspection as specified by the Commission so that the content of the bid is not known by any person other than the bidder until opened.

(2) Bids delivered to the Commission under this section shall be publicly opened by the Commission at a date, place and time determined by the Commission and recorded in a manner which shall not allow the bid or any part of it to be changed or substituted.

56. MODIFICATION AND WITHDRAWAL OF BIDS.

A bidder may modify or withdraw their bid at any time before the deadline for bid submission, using the method determined by the Procurement Instructions under this Act.

57. BID RECEIPT AND OPENING.

All procurement processes shall include a formal bid receipt and a bid opening, using the method determined by the Procurement Instructions under this Act.

58. REGISTRATION, QUALIFICATION AND PRE-QUALIFICATION OF BIDDERS.

(1) The Commission and public and statutory bodies shall not receive a bid from or contract with any person that is not registered with the Commission under this section.

(2) The Commission may -

(a) register, as a qualified bidder, all persons that meet the qualifications under this section; and

(b) remove, from the register, any person that no longer meets the qualifications under this section.

(3) The qualifications required of the bidder are -

(a) that the bidder has the legal capacity to enter into a contract; and

(b) that the bidder is not insolvent, in receivership, bankrupt or ever been bankrupt or being wound up; and

(c) that the bidder's business activities have not been suspended; and

(d) that the bidder is not the subject of legal proceedings for any of the purposes mentioned in Paragraph (b); and

(e) that the bidder has fulfilled all obligations to register and pay taxes and social security obligations; and

(f) that the bidder has not less than three years relevant experience prior to the application for registration.

(4) Procurement Instructions under this Act shall specify the method of application for registration, the required documents to be produced to accompany the application and such other matters as are necessary to effect registration, including the period of effectiveness of the registration.

(5) A person may require the Commission to confirm in writing -

(a) whether that person is registered with the Commission under this section; and

(b) if the Commission refused to register a person under this section, the reason for the refusal to register that person.

(6) A procurement method authorised by the Commission under this Act may require the pre-qualification of registered bidders in order to determine the technical or financial experience, competence or capacity of a registered bidder in respect of a procurement.

(7) The Procurement Instructions under this Act shall specify the method of application for pre-qualification by registered bidders, the required documents to be produced to accompany the application and such other matters as are necessary to effect pre-qualification, including the period of effectiveness of the pre-qualification.

59. EVALUATION METHODOLOGY.

(1) The choice of an evaluation methodology for a procurement shall be determined by the type, value and complexity of the procurement, using the selection method determined by the Procurement Instructions under this Act.

(2) All procurement documents shall fully and comprehensively detail the evaluation methodology and criteria which shall apply.

(3) No evaluation criteria other than that stated in the procurement documents shall be taken into account.

(4) Evaluation of bids shall be completed expeditiously, using the method determined by the Procurement Instructions under this Act.

60. CHANGE IN BID DETAILS.

Bids shall not be altered or changed in substance, including changes in price, after the date and time of bid closing, except as may otherwise be determined by the Procurement Instructions under this Act.

61. CLARIFICATIONS OF BIDS RECEIVED.

The Commission may require bidders for clarification of their bids in order to assist in an evaluation and to clarify details that were not apparent or could not be finalised at the time of bidding, as determined by the Procurement Instructions under this Act.

62. PROHIBITION OF NEGOTIATIONS.

- (1) Negotiations shall not be carried out in respect of a bid, except where -
- (a) a competitive procurement method was used and only one bid was received in response to the call for bids; or
 - (b) a procurement method was used that resulted in only one bid.

(2) Negotiations under Subsection (1) shall only be carried out where the best evaluated bid or proposal exceeds the budget of the procurement set by the APC Committee.

(3) For the purposes of the negotiations under this section, the APC Committee or the Board shall investigate why the cost of the procurement exceeds the budget for the procurement and may -

- (a) cancel the procurement process and require that the procurement process be commenced again; or
- (b) negotiate with the bidder in order to obtain a reduction of the scope of the quantities of the procurement.

63. REJECTION OF BIDS.

Bids may be rejected by the Commission at any time prior to the award of the contract due to non-compliance with the tender process or specifications.

64. CHANGE IN BIDDER'S CIRCUMSTANCES.

Any change in the circumstances of a bidder during a procurement process which may materially affect the bidder's capacity to execute the contract shall be immediately drawn to the attention of the Commission by the bidder.

65. PROHIBITION OF PUBLIC OFFICERS.

Employees of public or statutory bodies shall not participate in a procurement process as bidders except as approved by the Commission where specific items are offered to the employees of a public or statutory body subject to -

- (a) internal advertisement and competition; and
- (b) the sale price being no less than the valuation of the items to be offered, as determined by an independent external valuer.

PART XIII. - PROCUREMENT METHODS.

66. DETERMINATION OF PROCUREMENT METHODS.

(1) Subject to this part, the Commission shall, by Procurement Instructions, determine the type of procurement methods which may be used for procurements.

(2) No procurement method other than the procurement methods determined in this part shall be used for any procurement.

(3) In determining the type of procurement methods which may be used for procurements under this part, the Commission shall give all details as are reasonably necessary to guide bidders and staff of the Commission in compliance with this section.

67. CHOICE OF PROCUREMENT METHODS.

The Commission shall determine the appropriate procurement method to be used for each procurement in accordance with the Procurement Instructions under this Act.

68. OPEN BIDDING.

(1) Except as provided for in this part, open bidding shall be used for all procurements.

(2) Open bidding shall be open to participation on equal terms by all providers.

(3) Procurements under the threshold level for minor procurements below which public and statutory bodies may procure themselves using a simplified procurement system approved by the Commission do not require public advertisement.

(4) Procurements under the threshold level for minor procurements below which public and statutory bodies may procure themselves using a standardised procurement system approved by the Commission require public advertisement through advertisement of the procurement opportunity by a notice published in at least one widely read national newspaper.

(5) Procurements undertaken by the Commission require public advertisement through advertisement of the procurement opportunity by a notice published in at least one or two widely read national newspaper.

(6) Open bidding shall be used to obtain maximum possible competition and value for money, in accordance with the methods and procedures specified in the Procurement Instructions under this Act.

(7) Bidding documents shall be issued to prospective bidders at a fee as determined by the Commission.

(8) Subject to any national preferences or reservations or limitations under this Act, nothing shall prevent a foreign or international bidder from participating in open bidding.

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69. CERTIFICATES OF INEXPEDIENCY.

(1) Subject to the ratification by the National Executive Council, the Board may grant a Certificate of Inexpediency which authorises the use of a procurement method other than open bidding, subject to such terms and conditions as it thinks fit.

(2) The Board shall only grant a Certificate of Inexpediency to meet the interests of the State in the event of -

(a) an emergency declared by the National Executive Council created by -

(i) civil disturbance; or

(ii) natural disaster; or

(iii) health emergency; or

(iv) matters relating to national security or defence emergency; or

(b) subject to the terms of the PFMA, negotiations for a loan or the procurement of a loan to a public or statutory body.

(3) The method and duration of procurement, including specifics and such other requirements for an emergency procurement, shall be as determined by the Procurement Instructions under this Act.

(4) The Board shall not grant a Certificate of Inexpediency in any circumstance not specified in Subsection (2), and in particular shall not grant a Certificate of Inexpediency in order to simply expedite a procurement or to cure non-compliance with the procurement requirements established by or under this Act.

PART XIV. - CONTRACTS.

70. APPROVAL BY STATE SOLICITOR OF CONTRACTS.

(1) Subject to this part, all contracts for procurements shall be drawn, approved and cleared by the State Solicitor.

(2) The Commission and public and statutory bodies may use, without alteration or amendment, contract formats for procurements drawn and approved by the State Solicitor.

(3) The Commission and public and statutory bodies shall deliver to the State Solicitor whenever he requires, complete and accurate copies of all files, documents, bids, correspondence and contracts relating to any procurement, irrespective of whether or not the procurement was completed.

71. FORM OF CONTRACT.

The form of contract to be used in any procurement shall be at the sole discretion of the State Solicitor in order that the best interests of the State are fully protected.

72. CONTRACTS.

(1) For the purposes of this Act, an award decision by the Board is not a contract.

(2) An award decision by the Board shall be confirmed by a signed written contract for every procurement in a form approved and cleared by the State Solicitor.

(3) Contracts which do not comply with this section are void from the moment of execution.

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73. CONTRACT MANAGEMENT.

(1) All contracts arising from procurements undertaken by the Commission shall have the contract management of each contract assigned to third party contract management services, which shall independently manage a contract on behalf of the Commission.

(2) A third party contract management service, (in respect of a contract), on behalf of the Commission, shall -

- (a) administer the execution of the contract to ensure timely and satisfactory completion of the contract; and
- (b) implement the execution of the contract in accordance with the terms and conditions of the contract; and
- (c) act impartially to make determinations or recommendations for variations to a contract to the Commission and the APC Committee; and
- (d) supervise, make determinations or recommendations, give instructions, exercise discretion and certify completed portions of the contract; and
- (e) certify necessary payment for completed portions of the contract; and
- (f) endeavour to settle disagreements promptly with a contractor and the Commission; and
- (g) such other obligations as set out by Procurement Instructions under this Act.

(3) All costs associated with the use of a third party contract management service shall be paid from the total funds appropriated by the National Budget for that procurement and no other funds shall be used for that purpose.

(4) The Board may waive a public or statutory body from compliance with this section if the Board is satisfied that, in respect of a particular contract or classes of contracts, that the public or statutory body has the necessary technical experience and capacity to execute the management of a contract to reasonable and sufficient standards.

(5) This section does not apply to contracts arising from procurements undertaken by the Commission if it is contrary to an international agreement to which the State is a party.

74. LIMITATION ON CONTRACTING.

(1) A contract with respect to a procurement shall not be entered into with -

- (a) a member of a TFEC, the Commission, APC Committee or its Secretariat; or
- (b) a person appointed to politically or administratively control any public or statutory body; or
- (c) a member of a public or statutory body, including their employees; or
- (d) a company or association, where a person specified in Paragraphs (a), (b) or (c) has any legal or beneficial interest.

(2) A contract entered into which does not comply with Subsection (1) is void from the moment of execution and no compensation, whether legal or equitable is payable or shall be ordered to be paid by any court of competent jurisdiction.

(3) A person referred to under Subsection (1) who has a conflict of interest with respect to a procurement shall not -

- (a) take part in the procurement proceedings; and
- (b) after a procurement contract is entered into, take part in any decision relating to the procurement contract.

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(4) Conflict of interest in this section, in relation to a person to whom this section applies, includes the personal interest of any relation or business associate which that person has knowledge or would have had knowledge if he or she exercised due diligence having regard to all the circumstances.

PART XV. - ADMINISTRATIVE REVIEW.

75. ADMINISTRATIVE REVIEW BY APC COMMITTEE.

(1) Subject to this part, a person who is aggrieved by a decision of the Board or a public or statutory body in respect of a procurement may make a complaint to the APC Committee.

(2) A complaint under this section shall -

(a) be in writing; and

(b) be made within ten working days from the date the person first becomes aware or ought to have become aware, of the decision of the Board of the Commission or a public or statutory body in respect of which the person is allegedly aggrieved.

(3) On receiving the complaint, the APC Committee may -

(a) suspend the procurement proceedings of the Commission or a public or statutory body; and

(b) make a decision in writing, within 15 working days, indicating the corrective measures to be taken, if any, and giving reasons for the decision and submit a copy of the decision to the person making the complaint.

(4) Subject to this Act, a contract shall not be entered into with a provider before the APC Committee makes a final decision in respect of a complaint.

PART XVI. - MISCELLANEOUS.

76. SUSPENSION OF PROVIDERS.

The Board may suspend a person from engaging in any procurement process for a period determined by it, where -

(a) the person fails to comply with this Act; or

(b) the person is debarred from the procurement processes of an international agency of which Papua New Guinea is a member; or

(c) after investigations by the Auditor General or an independent body appointed by the Auditor General, the person is found to have a record of unsatisfactory performance; or

(d) the person is convicted of an offence under this Act or any other law in force; or

(e) the person fails to substantially perform the obligations specified in the contract; or

(f) the person is suspended by a professional body, for professional misconduct; or

(g) the person is found to have defaulted on the obligations specified under the law.

77. DELEGATION.

(1) Subject to this Act, a person vested with a power, role or responsibility under this Act may delegate that power, role or responsibility to any person who is a staff of the Commission or a member of the Board of the Commission.

(2) A delegation under this Act shall -

(a) be by notice in writing executed by the person vested with the power, role or responsibility under this Act; and

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- (b) come into force on the day of publication in the National Gazette or the date specified in the notice, whichever is the later; and
- (c) be subject to such terms and conditions as the delegator thinks fit, and shall have a stated duration of the delegation, after which it will expire.

(3) The Board may delegate, on such terms and conditions as it thinks fit, its procurement function at a provincial, local and district level -

- (a) at a Provincial Level, to a Provincial Committee of the Commission; or
- (b) at a District Level, to a District Committee of the Commission; or
- (c) at a Local Level, to a Local-level Committee of the Commission.

(4) The Commission shall not delegate its functions under Subsection (3) if the Provincial Government, Local-level Government or the relevant District Development Authority has not been certified under this Act that it -

- (a) has the capacity to engage in the procurement processes; and
- (b) it is sufficient to protect the use of public funds and ensure that good public financial management practices are followed and applied by Provincial Government or Local-level Government, including the relevant District Development Authority.

(5) A Provincial Committee of the Commission shall consist of -

- (a) the Provincial Administrator *ex officio*, who shall be the Chairman; and
- (b) the Provincial Works Manager *ex officio*; and
- (c) the Advisor Planning and Budgeting *ex officio*; and
- (d) the Provincial Finance Manager *ex officio*; and
- (e) an independent person appointed by the Finance Minister who has an unimpeachable and impeccable reputation and relevant experience or demonstrated understanding of commercial, procurement or contracting practices.

(6) A District Committee of the Commission shall consist of -

- (a) Chief Executive Officer of the District Development Authority or, in absence of a District Development Authority, the District Administrator *ex officio* as Chairman; and
- (b) District Finance Manager *ex officio*; and
- (c) a person appointed to represent the interests of justice, law and order in the District; and
- (d) a person appointed to represent the interests of the community in the District; and
- (e) subject to this section, a person appointed to represent the interests of women in the District.

(7) The quorum at a meeting of a Provincial Committee of the Commission or District Committee of the Commission is three members, of which at least one shall be an *ex officio* member.

(8) The constitution of a Local-level Committee shall be determined by Procurement Instructions issued under this Act.

78. OFFENCES.

(1) All offences under this Act are offences of strict liability.

(2) A person who, in whole or part, omits or fails to comply with a duty, obligation or requirement specified in this Act is guilty of an offence.

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(3) In sentencing a person after conviction of an offence under this Act, the rank, title or designation of the person within the public or statutory body at the time of the commission of the offence shall be considered by the sentencing court so that the higher the rank, title or designation of the person, the more serious the offence when imposing penalty.

(4) The penalties for conviction for an offence under this Act are -

- (a) in the case of an offence by an individual person, a fine not exceeding K2,000,000.00 and imprisonment for a period not exceeding 15 years; and
- (b) in the case of an offence by a person other than an individual person a fine not exceeding K50,000,000.00.

79. PERMANENT DISBARMENT.

(1) A person, whether corporate or unincorporated, who is convicted of an offence under this Act is permanently barred from employment with or from contracting to a public or statutory body.

(2) A person who has any contractual relationship with any public or statutory body is permanently barred from employing or contracting with any person referred to in Subsection (1).

80. REGULATIONS.

The Head of State, acting on the advice of the National Executive Council, may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in general for the better control and management of procurement and implementation of the objectives and functions of this Act.

81. TRANSITIONAL PROVISIONS.

(1) The APC Committee and its Secretariat shall control all aspects of the timing of the implementation of this Act.

(2) Notwithstanding the repeal of the procurement provisions contained in Part VII of the *Public Finances (Management) Act 1995*, until advised by, and subject to the conditions imposed by or the instructions issued by the APC Committee and its Secretariat, the former Central Supply and Tenders Board, Provincial Supply and Tenders Board and Specialised National Supply and Tenders Board shall perform the functions of the National Procurement Commission under this Act until the appointment of the Commission and its staff.

(3) All acts, matters or things done or suffered or deemed to have been done or suffered or taken, or procedural steps taken under or for the purposes of a provision having effect immediately before the coming into operation of this Act, shall, after that coming into operation, be deemed to have been done or suffered or taken under, or for the purpose of, this Act.

(4) All property, except such property the Finance Minister may determine, which immediately before the commencement of this Act was vested in the Government for the use of or was the property of the Central Supply and Tenders Board, any Provincial, Specialised or District Supply and Tenders Board on the date of the commencement of this Act shall immediately vest in the Commission subject to all interests, liabilities, charges, obligations and trusts affecting that property.

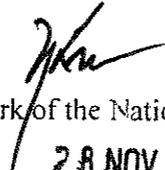
(5) All legal obligations including contracts or agreements entered into, proceedings and claims pending in respect of the Central Supply and Tenders Board, any Provincial, Specialised or District Supply and Tenders Board shall be continued or enforced by or against the Commission in the same manner as they would have been continued or enforced if this Act had been in force at the time when the cause of action arose.

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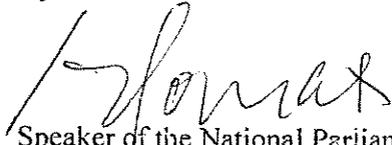
(6) An Authority to Pre-commit Expenditure issued under any law in force immediately prior to the commencement of this Act shall be deemed to be an Authority to Pre-commit Expenditure issued under this Act.

(7) Except as provided for under this Act, this Act shall take precedence over all other enactments regulating procurement.

I hereby certify that the above is a fair print of the *National Procurement Act 2018*, which has been made by the National Parliament.


Clerk of the National Parliament.
28 NOV 2018

I hereby certify that the *National Procurement Act 2018*, was made by the National Parliament on 12 September 2018.


Speaker of the National Parliament.
28 NOV 2018