

National Procurement Act 2018

Consolidated: 13/10/2022



No. 12 of 2018.

AN ACT

entitled

National Procurement Act 2018,

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation -
 - “APC Committee”
 - “Authority to Pre-commit Expenditure”
 - “bid”
 - “bidder”
 - “bid documents”
 - “Board”
 - “Chief Executive Officer”
 - “citizen”
 - “Code of Ethics”
 - “Commission”
 - “Commission Secretary”
 - “consultancy service”
 - “contract”
 - “Departmental Head”
 - “disposal”
 - “District Committee of the Board”
 - “Finance Departmental Head”
 - “Finance Minister”
 - “framework contract”
 - “General Revenue Fund”
 - “goods”
 - “information”
 - “National Budget”
 - “national company”
 - “National Planning Departmental Head”
 - “open bidding”
 - “person”
 - “PFMA”
 - “pre-qualification”

“procurement”
“Procurement Instructions”
“Provincial Committee of the Board”
“public asset”
“public body”
“public funds”
“public property”
“Public Service Minister”
“RSA Act”
“SCMC Act”
“services”
“specifications”
“Special Committee of the Board”
“statement of requirements”
“statutory body”
“Technical and Financial Evaluation Committee”
“tender”
“tender documents”
“TFEC”
“the Consolidated Revenue Fund”
“threshold limit”
“Treasurer”
“Treasury Departmental Head”
“Trust Account”
“works”

3. References to other Acts.
4. Act binds the State.
5. Application to public and statutory bodies.
6. Application to Bougainville Government.
7. Application to international agreements.

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

8. Establishment of the National Procurement Commission.
9. Functions of the Commission.
10. Powers of the Commission.

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

11. Establishment of the Board.
12. Powers and functions of the Board with respect to procurement.
- 12A. Powers and functions of the Board with respect to the Commission.
13. Membership of the Board.
14. Chairperson of the Board.
15. Meetings of the Board.

16. Disclosure of interest.
17. Vacancy in membership of the Board.

PART IV. - STAFF OF THE COMMISSION.

18. Chief Executive Officer.
19. Commission Secretary.
20. Staff of the Commission.

PART V. - FINANCES OF THE COMMISSION.

21. Funds of the Commission.
22. Application of the *Public Finances (Management) Act 1995*.
23. Submission of annual management plan, etc.
24. Budget estimates.

PART VI. - POST NATIONAL BUDGET PROCUREMENT PLANNING.

25. Post National Budget procurement planning.

PART VII. - PROCUREMENT THRESHOLDS AND CAPACITY LIMITATIONS.

26. Procurement thresholds.
27. Procurement capacity requirement.
28. Certification of procurement capacity.

PART VIIA. - PROCUREMENTS BY COMMITTEES OF THE BOARD.

Division 1. - Provincial Committees of the Board.

- 28A. Application of Sections 27 and 28.
- 28B. Provincial Committees of the Board.
- 28C. Powers and functions of a Provincial Committee of the Board.
- 28D. Execution of contracts approved and awarded by Provincial Committee of the Board.
- 28E. Membership etc., of Provincial Committees of the Board.
- 28F. Chairperson of the Provincial Committee of the Board.

- 28G. Meetings of the Provincial Committee of the Board.
- 28H. Disclosure of interest by member of Provincial Committee of the Board.

Division 2. - District Committees of the Board.

- 28I. District Committees of the Board.
- 28J. Powers and functions of a District Committee of the Board.

- 28K. Execution of contracts approved and awarded by District Committee of the Board.
- 28L. Membership etc., of District Committees of the Board.
- 28M. Meetings of District Committee of the Board.
- 28N. Disclosure of interest by member of District Committee of the Board.

Division 3. - Special Committees of the Board.

- 28O. Establishment of Special Committees of the Board.
- 28P. Powers and functions of the Special Committee of the Board.
- 28Q. Approved and awarded contracts by the Special Committee of the Board.
- 28R. Membership etc., of Special Committees of the Board.
- 28S. Meetings of the Special Committee of the Board.
- 28T. Disclosure of interest by member of Special Committee of the Board.
- 28U. Accountability of committees of the Board.

PART VIII. - TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

- 29. Appointment of technical and financial evaluation committees.
- 30. Procurement for the purposes of the Commission.
- 31. Composition of a TFEC.
- 32. Functions of a TFEC.
- 33. Secretarial support to Technical and Financial Evaluation Committees.
- 34. Relationship of public and statutory bodies to Technical and Financial Evaluation Committees.
- 35. Technical and Financial Evaluation Committees independent performance of functions.
- 36. Procurement records.
- 37. Deference and security related procurements.

PART IX. - PROCUREMENT PRINCIPLES.

- 38. Application of procurement principles.
- 39. Non-discrimination.
- 40. Transparency, accountability and fairness.
- 41. Competition.
- 42. Transparency and confidentiality.
- 43. Economy and efficiency.
- 44. Codes of ethics.

PART X. - PROCUREMENTS INSTRUCTIONS, ETC.

- 45. Procurement instructions, etc.
- 46. Communications.

PART XI. - PREFERENCE AND RESERVATION.

47. National preference allowance.
48. National reservations and restrictions.

PART XII. - SPECIFICATIONS AND STANDARDS.

49. Statements of requirements.
50. Application of industry standards.
51. Tender document transparency.
52. Selection of bidders.
53. Bidding period.
54. Clarification of tender documentation.
55. Delivery of bid documents.
56. Modification and withdrawal of bids.
57. Bid receipt and opening.
58. Registration, qualification and pre-qualification of bidders.
59. Evaluation methodology.
60. Change in bid details.
61. Clarifications of bids received.
62. Prohibition of negotiations.
63. Rejection of bids.
64. Change in bidder's circumstances.
65. Prohibition of public officers.

PART XIII. - PROCUREMENT METHODS.

66. Determination of procurement methods.
67. Choice of procurement methods.
68. Open bidding.
69. Certificates of inexpediency.

PART XIV. - CONTRACTS.

70. Approval of contracts by State Solicitor.
71. Form of contract.
72. Contracts.
73. Contract management.
74. Limitation on contracting.

PART XV. - ADMINISTRATIVE REVIEW.

75. Administrative review by APC Committee.

PART XVI. - MISCELLANEOUS.

76. Suspension of providers.
77. Delegation.

78. Offences.
79. Permanent disbarment.
80. Regulations.
81. Transitional provisions.



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.

National Procurement

(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 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;

“Board” means the Board of the Commission established under Section 11;¹

“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*², 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,

¹ The definition of “Board” added by No. 13 of 2021, s.1(a).

² This Act of Parliament has been deemed invalid. See, *Philip Kereme v Peter O’Neil* [2019] SC1781 (28 March 2019). See, meaning of “Departmental Head” in *Public Service Management Act 1995*. Note, any reference to the *Public Services (Management) Act 2014* anywhere in this Act is a reference to the *Public Services (Management) Act 1995*.

National Procurement

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;

“District Committee of the Board” means a Committee of the Board at the district level established in accordance with Section 28I;³

“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;

“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;

“Provincial Committee of the Board” means a Committee of the Board at the provincial level established in accordance with Section 28B;⁴

³ The definition of “District Committee of the Board” added by No. 13 of 2021, s.1(b).

⁴ The definition of “Provincial Committee of the Board” added by No. 13 of 2021, s.1(c).

National Procurement

- “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 the Ministers under Section 148 of the *Constitution*, to be the Minister responsible for the administration of the *Public Services (Management) Act 2014*⁵;
- “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;
- “Special Committee of the Board” means a Committee of the Board at the public body or statutory body level established in accordance with Section 280;⁶
- “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;
- “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 or any arrangement of this nature; or
 - (c) goods or services incidental to those works where the value of the incidental goods or services does not exceed the value of the works.⁷

⁵ See, Footnote 2.

⁶ The definition of “Special Committee of the Board” added by No. 13 of 2021, s.1(d).

⁷ The definition of “works” repealed and replaced by No. 13 of 2021, s.1(e).

National Procurement

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.

(3) This Act also applies to funds appropriated to a public or statutory body under the National Budget and which the public or statutory body has transferred to any other person for the purpose of effecting a procurement.⁸

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.

(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

⁸ Subsection (3) added by No. 13 of 2021, s.2.

National Procurement

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 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 the 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.

National Procurement

- (2) Subject to this section, the functions of the Commissions 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
 - (aa) to grant, sell, alienate, assign, and demise public property; and⁹
 - (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
 - (e) monitor and report on the performance of the procurement systems by public and statutory bodies and advise on desirable changes; and¹⁰
 - (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 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.

⁹ Paragraph (aa) added by No. 13 of 2021, s.3(a).

¹⁰ Ibid, repealed and replaced, s.3(b).

National Procurement

(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 WITH RESPECT TO PROCUREMENT.¹¹

- (1) The Board shall -
- (a) give full effect to the purpose and objectives of this Act; and
 - (b) approve and award contracts for procurements undertaken by the Commission up to the Board's threshold limit of K10,000,000.00; and
 - (c) examine and consider TFEC recommendations to approve and award contracts for procurements undertaken by the Commission up to the Board's threshold limit of K10,000,000.00; and
 - (d) examine and consider TFEC recommendations and make recommendations to the National Executive Council for contracts for procurements with a value in excess of K10,000,000.00 or such other higher amount as may be approved by the National Executive Council for -
 - (i) approval and award of these contracts by the National Executive Council; and
 - (ii) execution of these contracts by the Head of State, acting on the advice of the National Executive Council; and
 - (e) formally constitute a TFEC made up of respective TFEC members appointed under Section 31(1) to evaluate procurements undertaken by the

¹¹ Section 12 repealed and replaced by No. 13 of 2021, s.4.

National Procurement

- Commission; and
- (f) examine, consider, and approve or reject variations or terminations of resulting contracts over 10 percent of the total approved contract value up to the Board's threshold limit of K10,000,000.00 in accordance with the terms and conditions of the resulting contracts for procurements undertaken by the Commission; and
- (g) examine, consider, and recommend variations or terminations of resulting contracts over 10 percent of the total approved contract value that are values in excess of K10,000,000.00 in accordance with the terms and conditions of the resulting contracts for procurements undertaken by the Commission; and
- (h) issue Procurement Instructions, procurement manuals or guidelines; and
- (i) determine and authorise procurement methods for any procurement governed under this Act; and
- (j) make recommendation to the Finance Minister in accordance with Section 69; and
- (k) give directions in accordance with Section 48(5) with respect to national reservations and restrictions; and
- (l) review and decide on costs of procurements in accordance with Section 62(3); and
- (m) suspend a person from engaging in any procurement process in accordance with Section 76; and
- (n) make recommendations to the responsible Minister in respect to fees and charges for procurement related activities in accordance with the ***Public Finances (Management) Act 1995***; and
- (o) undertake such other functions, and exercise such powers as may be conferred on it by this Act or any other law.

(2) The Board may, in the exercise of its powers and performance of its functions under -

- (a) Subsection (1)(b), (c) and (d) -
 - (i) require from time to time further explanation and documentation from the TFEC or the Commission; and
 - (ii) subject to Section 48(3)(a) and (b), require further documentation from the head of the department responsible for immigration and citizenship matters and the head of the department responsible for investment promotion matters, to confirm the citizenship status of recommended bidders; and
- (b) Subsection (1)(c) and (d), is not bound by the recommendations of TFEC, but if it does not adopt those recommendations, it shall provide the TFEC and the relevant public or statutory body and the National Executive Council, as the case may be, with justifiable reasons for not following the recommendations of the TFEC; and

National Procurement

- (c) Subsection (1)(e) has no role or function in respect of the TFEC decisions and shall not in any way seek to influence those decisions; and
- (d) Subsection (1)(f) and (g) may require from time to time further explanation and documentation from a public or statutory body or a person prescribed in the resulting contract as the Contract Manager or its equivalent.

(3) 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.

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

(5) A contract for a procurement undertaken by the Commission on behalf of a public or statutory body 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.

12A. POWERS AND FUNCTIONS OF THE BOARD WITH RESPECT TO THE COMMISSION.¹²

The Board shall -

- (a) be responsible for providing control and guidance over the exercise of the functions and powers of the Commission; and
- (b) endorse annual management plans and fiscal estimates in accordance with Part V of this Act and the *Public Finances (Management) Act 1995*; and
- (c) establish, approve and determine procedures for the staff of the Commission under Section 20(1); and
- (d) pursuant to Section 20(3), determine the terms and conditions of service of the staff of the Commission, other than the terms and conditions of service determined under the *Salaries and Conditions Monitoring Committee Act 1988*; and
- (e) undertake such other functions, and exercise such powers as may be conferred on it by this Act or any other law.

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

¹² Section 12A added by No. 13 of 2021, s.5.

National Procurement

- (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.

(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 National Executive Council, upon recommendation of the Finance Minister to be the Chairperson of the Board.¹³

¹³ Subsection (1) repealed and replaced, s.6.

National Procurement

(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)¹⁴, and no more than two are delegates of members.

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

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

¹⁴ *Seemle*, the correct reference is Section 13(1)(d) and (e).

National Procurement

(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 only -

(a) manage and direct the administrative affairs and daily operations of the Commission; and

(b) be responsible to the Board for the efficient carrying out of the functions and exercising the powers of the Commission in accordance with this Act; and

(c) advise the Board and implement the Board's decisions on any matter concerning the Commission referred to him by the Board.¹⁵

(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.

¹⁵ Subsection (2) repealed and replaced by No. 13 of 2021, s.7.

National Procurement

- (7) The Chief Executive Officer may be dismissed or suspended from office only pursuant to his contract of employment and 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 Officer shall be filled as soon as practicable, after the vacancy arises.

19. COMMISSION SECRETARY.

- (1) The Chief Executive Officer shall, upon the advice of the Board, appoint a person with legal or procurement expertise to be the Commission Secretary.¹⁶
- (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.

¹⁶ Ibid, repealed and replaced, s.8.

National Procurement

(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.

- (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.

National Procurement

(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) Subject to this Act, 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 K50,000.00; 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 K50,001.00 to K1,000,000.00; 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 K1,000,000.00; and
- (d) in the case of a Provincial Committee of the Board, not exceeding K10,000,000.00 the threshold level below which a Provincial Committee of the Board, may procure itself using a standardised procurement system approved by the Commission is K10,000,000.00; and
- (e) in the case of a District Committee of the Board, procuring themselves, using a standardised procurement system approved by the Commission, the threshold level is K5,000,000.00; and
- (f) in the case of a Special Committee of the Board, procuring themselves, using a standardised procurement system approved by the Commission, the threshold level is up to K5,000,000.00.¹⁷

(1A) Procurement thresholds and the management and control of disposal shall be prescribed under the Procurement Instructions issued under this Act.¹⁸

¹⁷ Subsection (1) repealed and replaced by No. 13 of 2021, s.9(a).

¹⁸ Ibid, new subsection, s.9(a).

National Procurement

(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) Where -

(a) a procurement threshold under this part requires a procurement of a Provincial or Local-level Government or of a District Development Authority or public or statutory body 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 or head of the public or statutory body, 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.¹⁹

[Subsection (5) repealed by No. 13 of 2021, s.9(c).]

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.

(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

¹⁹ Ibid, repealed and replaced, s.9(b) and (c).

National Procurement

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.²⁰

(1) A public or statutory body may apply for certification of procurement capacity pursuant to Section 27(2) by providing to the APC Committee, evidence satisfactory to the APC Committee that confirms -

- (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 sufficient procurement experience, training and qualifications of all of the staff of the public or statutory body that are to engage in procurement processes.

(2) The APC Committee shall consult the Commission for its advice and views in respect of any application pursuant to Section 27(2), 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 pursuant to Section 27(2) 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 Section 27(2) shall undertake procurements in accordance with the terms and conditions of that certification.

(5) Subject to this section, a certification pursuant to Section 27(2) expires three years from the date of certification and may be renewed pursuant to Subsection (6) after a new application is submitted by the public or statutory body.

(6) A certification under this section shall not be renewed unless the public or statutory body applying for renewal provides to the APC Committee evidence, satisfactory to the APC

²⁰ Section 28 repealed and replaced by No. 13 of 2021, s.10.

National Procurement

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 procurement undertaken by the public or statutory body that have not been resolved to the satisfaction of the auditors.

(7) A public or statutory body may apply for an increase in the procurement threshold of Section 26(1)(b) by providing to the APC Committee, evidence satisfactory to the APC Committee that confirms -

- (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 sufficient 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) that a person nominated by the APC Committee for the purpose of providing an independent report on all procurement undertaken by the public or statutory body within the procurement threshold of Section 26(1)(b) has -
 - (i) examined these procurements for the last three financial years prior to the date of application; and
 - (ii) determined that the public or statutory body has undertaken these procurements in compliance with this Act.

(8) Subject to this section, a public or statutory body may be certified by the APC Committee pursuant to Subsection (7) as having capacity to undertake procurement within a threshold to be determined by the APC Committee, subject to such terms and conditions and for such period as the APC Committee thinks fit.

(9) A public or statutory body certified pursuant to Subsection (7) shall undertake procurement strictly in accordance with the terms and conditions of that certification.

(10) A certification pursuant to Subsection (7) commences on the date determined by the APC Committee.

(11) Subject to this section, a certification pursuant to Subsection (7) expires three years from the date of certification and may be renewed pursuant to Subsection (6) after a new application is submitted by the public or statutory body.

PART VIIA. - PROCUREMENTS BY COMMITTEES OF THE BOARD.²¹

*Division 1. - Provincial Committees of the Board.*²²

28A. APPLICATION OF SECTIONS 27 AND 28.²³

For the avoidance of doubt, the certification requirements under Sections 27 and 28 apply to this part.

28B. PROVINCIAL COMMITTEES OF THE BOARD.²⁴

(1) Provincial Committees of the Board are hereby established for each Provincial Government at the provincial level.

(2) The Provincial Committees shall undertake, manage, control and regulate procurements within their threshold level specified in Section 26(1)(d), in accordance with this Act for and on behalf of the State in the provinces.

(3) A Provincial Committee shall -

- (a) give full effect to the purpose and objectives of this Act; and
- (b) undertake, manage, control and regulate procurements at the provincial level within their threshold level specified in Section 26(1)(d) in accordance with this Act; and
- (c) approve and award contracts for procurements undertaken by the Provincial Committee of the Board within their threshold level specified in Section 26(1)(d); and
- (d) examine and consider TFEC recommendations to approve and award contracts for procurements undertaken by the Provincial Committee of the Board within their threshold level specified in Section 26(1)(d); and
- (e) examine, consider and approve or reject variations or terminations of resulting contracts over 10 percent of the total approved contract value up to the Provincial Committee of the Board's threshold level specified in Section 26(1)(d) in accordance with the terms and conditions of the resulting contracts for procurements undertaken by the Provincial Committee of the Board; and
- (f) undertake such other functions and exercise such powers as may be conferred on it by this Act or any other law.

²¹ Part VIIA added by No. 13 of 2021, s.11.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

28C. POWERS AND FUNCTIONS OF A PROVINCIAL COMMITTEE OF THE BOARD.²⁵

(1) The Provincial Committee of the Board, in the exercise of its powers and performance of its functions shall maintain proper records of its procurements and shall furnish reports to the Board of the Commission relating to its procurements, as and when required.

(2) The Provincial Committee of the Board, in the exercise of its powers and performance of its functions shall establish a TFEC for each procurement that include but not be limited to persons with specialised knowledge and expertise in law, finance and procurement to assist the Provincial Committee of the Board in its consideration of bids received and shall not in any way interfere or influence the decisions of the TFEC.

28D. EXECUTION OF CONTRACTS APPROVED AND AWARDED BY PROVINCIAL COMMITTEE OF THE BOARD.²⁶

(1) All contracts approved and awarded by the Provincial Committee of the Board in accordance with Subsection (2) shall be executed by the Chairperson of the Provincial Committee of the Board.

(2) Contracts executed by the Chairperson of the Provincial Committee of the Board are binding on the State.

(3) Contracts with a value in excess of the Provincial Committee of the Board's threshold level specified in Section 26(1)(d), or such other higher amount as may be approved by the National Executive Council, shall only be approved by the National Executive Council, upon the recommendation of the Board of the Commission and shall only be executed by the Head of State, acting on the advice of the National Executive Council.

28E. MEMBERSHIP ETC., OF PROVINCIAL COMMITTEES OF THE BOARD.²⁷

A Provincial Committee of the Board shall consist of -

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

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

28F. CHAIRPERSON OF THE PROVINCIAL COMMITTEE OF THE BOARD.²⁸

A member of a Provincial Committee of the Board shall be appointed by the Finance Minister, upon recommendation of a Provincial Executive Council, to be the Chairperson of that Provincial Committee of the Board.

28G. MEETINGS OF THE PROVINCIAL COMMITTEE OF THE BOARD.²⁹

- (1) At a meeting of the Provincial Committee 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 at a meeting of a Provincial Committee of the Board is three members, of which at least one shall be an *ex officio* member.

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

28H. DISCLOSURE OF INTEREST BY MEMBER OF PROVINCIAL COMMITTEE OF THE BOARD.³⁰

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Provincial Committee of 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 Provincial Committee of the Board and the disclosure shall be recorded in the minutes of the meeting.

(2) A member of the Provincial Committee of the Board making a disclosure under Subsection (1) shall -

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

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

National Procurement

*Division 2. - District Committees of the Board.*³¹

28I. DISTRICT COMMITTEES OF THE BOARD.³²

- (1) District Committees of the Board are hereby established for each district at the district level.
- (2) The District Committees shall undertake, manage, control and regulate procurements within their threshold level specified in Section 26(1)(e), in accordance with this Act for and on behalf of the State in the districts.
- (3) A District Committee of the Board shall -
 - (a) give full effect to the purpose and objectives of this Act; and
 - (b) undertake, manage, control and regulate procurements at the district level within their threshold level specified in Section 26(1)(e), in accordance with this Act; and
 - (c) approve and award contracts for procurements undertaken by the District Committee of the Board within their threshold level specified in Section 26(1)(e); and
 - (d) examine and consider TFEC recommendations to approve and award contracts for procurements undertaken by the District Committee of the Board within their threshold level specified in Section 26(1)(e); and
 - (e) examine, consider and approve or reject variations or terminations of resulting contracts over 10 percent of the total approved contract value up to the District Committee of the Board's threshold level specified in Section 26(1)(e) in accordance with the terms and conditions of the resulting contracts for procurements undertaken by the District Committee of the Board; and
 - (f) undertake such other functions, and exercise such powers as may be conferred on it by this Act or any other law.

28J. POWERS AND FUNCTIONS OF A DISTRICT COMMITTEE OF THE BOARD.³³

- (1) The District Committee of the Board shall, in the exercise of its powers and performance of its functions, maintain proper records of its procurements, and shall furnish reports to the Board of the Commission relating to its procurements, as and when required.
- (2) The District Committee of the Board shall, in the exercise of its powers and performance of its functions, establish a TFEC for each procurement that include but not limited to persons with specialised knowledge and expertise in law, finance and procurement to assist the District Committee of the Board in its consideration of bids received and shall not in any way interfere or influence the decisions of the TFEC.

³¹ Ibid.

³² Ibid.

³³ Ibid.

28K. EXECUTION OF CONTRACTS APPROVED AND AWARDED BY DISTRICT COMMITTEE OF THE BOARD.³⁴

(1) All contracts approved and awarded by the District Committee of the Board in accordance with Subsection (2) shall be executed by the Chairperson of the District Committee of the Board.

(2) Contracts executed by the Chairperson of the District Committee of the Board are binding on the State.

28L. MEMBERSHIP ETC., OF DISTRICT COMMITTEES OF THE BOARD.³⁵

(1) A District Committee of the Board shall consist of -

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

(2) A member of a District Committee of the Board shall be appointed by the Finance Minister, upon recommendation of a Board of a District Development Authority, to be the Chairperson of that District Committee of the Board.

28M. MEETINGS OF DISTRICT COMMITTEE OF THE BOARD.³⁶

(1) At a meeting of the District Committee 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 has a casting vote.

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

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

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

28N. DISCLOSURE OF INTEREST BY MEMBER OF DISTRICT COMMITTEE OF THE BOARD.³⁷

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the District Committee of 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 District Committee of the Board and the disclosure shall be recorded in the minutes of the meeting.

(2) A member of the District Committee of the Board making a disclosure under Subsection (1) shall -

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

Division 3. - Special Committees of the Board.³⁸

28O. ESTABLISHMENT OF SPECIAL COMMITTEES OF THE BOARD.³⁹

(1) Special Committees of the Board are hereby established at the public or statutory level.

(2) The Special Committees shall undertake, manage, control and regulate procurements within their threshold level specified in Section 26(1)(f), in accordance with this Act for and on behalf of the State or statutory body.

(3) A Special Committee of the Board shall -

- (a) give full effect to the purpose and objectives of this Act; and
- (b) undertake, manage, control and regulate procurements at the public or statutory level within their threshold level specified in Section 26(1)(f), in accordance with this Act; and
- (c) approve and award contracts for procurements undertaken by the Special Committee of the Board within their threshold level specified in Section 26(1)(f); and
- (d) examine and consider TFEC recommendations to approve and award contracts for procurements undertaken by the Special Committee of the Board within their threshold level specified in Section 26(1)(f); and
- (e) examine, consider and approve or reject variations or terminations of resulting contracts over 10 percent of the total approved contract value up to the Special Committee of the Board's threshold level specified in Section 26(1)(f), in accordance with the terms and conditions of the resulting

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

National Procurement

contracts for procurements undertaken by the Special Committee of the Board; and

- (f) undertake such other functions and exercise such powers as may be conferred on it by this Act or any other law.

28P. POWERS AND FUNCTIONS OF THE SPECIAL COMMITTEE OF THE BOARD.⁴⁰

(1) The Special Committee of the Board shall, in the exercise of its powers and performance of its functions, maintain proper records of its procurements and furnish reports to the Board of the Commission relating to its procurements, as and when required.

(2) The Special Committees of the Board shall, in the exercise of its powers and performance of its functions, establish a TFEC for each procurement that include but not limited to persons with specialised knowledge and expertise in law, finance and procurement to assist the Special Committee of the Board in its consideration of bids received and shall not in any way interfere or influence the decisions of the TFEC.

28Q. APPROVED AND AWARDED CONTRACTS BY THE SPECIAL COMMITTEE OF THE BOARD.⁴¹

(1) All contracts approved and awarded by the Special Committee of the Board in accordance with Subsection (2) shall be executed by the Chairperson of the Special Committee of the Board.

(2) Contracts executed by the Chairperson of the Special Committee of the Board are binding on the State or statutory body.

28R. MEMBERSHIP ETC., OF SPECIAL COMMITTEES OF THE BOARD.⁴²

A Special Committee of the Board consists of such members, not being less than three, as determined by the APC Committee, through the terms and conditions of the certification, and shall include but not be limited to members with procurement, finance and legal expertise, of which one member shall be the Chairperson.

28S. MEETINGS OF THE SPECIAL COMMITTEE OF THE BOARD.⁴³

- (1) At a meeting of the Special Committee 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 has a casting vote.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

National Procurement

(2) A quorum at a meeting of a Special Committee of the Board is such number of members as is fixed in relation to the Special Committee of the Board by the APC Committee.

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

28T. DISCLOSURE OF INTEREST BY MEMBER OF SPECIAL COMMITTEE OF THE BOARD.⁴⁴

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Special Committee of 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 Special Committee of the Board and the disclosure shall be recorded in the minutes of the meeting.

(2) A member of the Special Committee of the Board making a disclosure under Subsection (1) shall -

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

28U. ACCOUNTABILITY OF COMMITTEES OF THE BOARD.⁴⁵

(1) All committees established under this part are obliged to be subjected to this Act.

(2) Non-compliance by any committee established under this part at the provincial or district or public or statutory levels that results in that committee incurring any form of liability, shall take full responsibility of that liability in the name of that committee of the Board.

(3) Non-compliance on the part of a committee established under this part, shall be dealt with in accordance with Section 78.

PART VIII. - TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

29. APPOINTMENT OF TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.⁴⁶

For each procurement the Commission undertakes for and on behalf of a public and statutory body, the Board shall formally constitute a TFEC made up of respective TFEC members appointed under Section 31(1).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid, section repealed and replaced, s.12.

30. PROCUREMENT FOR THE PURPOSES OF THE COMMISSION.⁴⁷

Subject to this Act and Procurement Instructions, the Commission shall carry out procurements for the purposes of the Commission which are above the threshold levels specified in Section 26(1)(c), (d), (e) and (f).

31. COMPOSITION OF A TFEC.

(1) Subject to this section, a TFEC shall consist of persons with the skills, knowledge and experience relevant to the procurement and shall include 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 Chairperson of the TFEC; and
- (b) a staff member of the Commission with procurement and contracting experience appointed by the Chief Executive Officer; and
- (c) a lawyer appointed by the State Solicitor; and
- (d) an accountant appointed by the departmental head dealing with finance matters; and
- (e) such other persons appointed by the Board who, in the opinion of the Board, has the necessary technical or financial skills required for the technical or financial assessment of the procurement.⁴⁸

(2) The Board may co-opt advisers to assist a TFEC in the discharge of its functions.⁴⁹

(3) The tenure of the members of a TFEC shall be for the period necessary to complete the technical and financial evaluation of the subject procurement and shall report to the Board.⁵⁰

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

(5) Subject to Subsection (1)(c) and (d), unless the contrary intention appears -

- (a) “lawyer” means a person who has been admitted to practice as a lawyer under the *Lawyers Act 1986*; and
- (b) “accountant” means a person registered as an accountant in employment under the *Accountants Act 1996*.⁵¹

32. FUNCTIONS OF A TFEC.⁵²

(1) A TFEC has the following functions:

- (a) to undertake the technical and financial evaluation of a procurement promptly and in accordance with the approved post National Budget procurement plan; and
- (b) to ensure that practices in relation to procurement are strictly complied with

⁴⁷ Ibid, repealed and replaced, s.13.

⁴⁸ Ibid, subsection repealed and replaced, s.14(a).

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid, new subsection, s.14(b).

⁵² Ibid, repealed and replaced, s.15.

National Procurement

- during the technical and financial evaluation of the procurement; and
- (c) to ensure compliance with tender documents and requirements under Part XII of this Act during the technical and financial evaluation of the procurement; and
- (d) to ensure compliance with this Act in respect of the technical and financial evaluation.

(2) A TFEC shall undertake technical and financial evaluations of a procurement and make recommendations for contract award to the Board.

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

33. SECRETARIAL SUPPORT TO TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.⁵³

The Commission 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.⁵⁴

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

- (a) liaise with and assist the TFEC throughout the procurement to the point of recommendations being made by the TFEC; and
- (b) initiate procurement and forward the procurement requirements to the TFEC; and
- (c) propose technical inputs to statements of requirements for procurement requirements to the TFEC; and
- (d) propose technical specifications to the TFEC when necessary; and
- (e) prepare any reports required for submission to the Commission.

⁵³ Ibid, amended, s.16.

⁵⁴ Ibid, repealed and replaced, s.17.

National Procurement

- (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 Commission; and
 - (c) undertake conformity assessments; and
 - (d) issue variations in accordance with the terms and conditions of the contract; and
 - (e) certify invoices for goods, works and services 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.

National Procurement

- (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. DEFERENCE 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 criteria 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.

National Procurement

41. COMPETITION.

(1) Subject to this Act, all procurements shall be conducted in a manner to maximise competition and 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
- (iii) it contains propriety 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 Board may issue Procurement Instructions, 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, including the better control and management of disposals.⁵⁵

(3) The Board may issue procurement manuals or guidelines, not inconsistent with this Act, for guidance on the implementation of any matter provided for in this Act for the better control and management of procurement.⁵⁶

(4) All persons shall comply with the Procurement Instructions, procurement manuals, and guidelines issued under this section.⁵⁷

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.

(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.

⁵⁵ Subsection (2) repealed and replaced by No. 13 of 2021, s.18.

⁵⁶ Ibid.

⁵⁷ Ibid.

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 K50, 000,000.00, shall have a technical evaluation requirement that it is open to public tender only -⁵⁸
 - (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 K50, 000,000.00 shall have a technical evaluation requirement that it is open to public tender by all companies and persons.⁵⁹

(4) Where procurements specified in Subsection (3)(a) and (b) results in -

- (a) the lowest priced bid being equal to or greater than 10 percent more than the contract estimate fixed by the Commission; or
- (b) non-compliance of the technical evaluation requirement for participation of national companies and citizens by all bidders, the procurements shall be cancelled and retendered with a technical evaluation requirement that is open to public tender by all companies and persons, without any limitation.⁶⁰

⁵⁸ Paragraph (b) amended by No. 13 of 2021, s.19(a).

⁵⁹ Ibid.

⁶⁰ Ibid, repealed and replaced, s.19(b).

National Procurement

(5) A procurement is not subject to Subsection (3)(a) or (b) if the Board directs that it is not in the interest of the State to limit the procurement given a lack of capacity of national companies and citizens to undertake or provide the goods, works or services.⁶¹

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
- (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.

⁶¹ Ibid, new subsection, s.19(c).

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

National Procurement

- (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 or such other experience as is specified in the statement of requirements.⁶²

(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) The procurement method determined by the Board under this Act may require the pre-qualification of registered bidders in order to determine the technical and financial experience, competence or capacity of a registered bidder in respect of a procurement.⁶³

(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.

⁶² Paragraph (f) repealed and replaced by No. 13 of 2021, s.20(a).

⁶³ Ibid, repealed and replaced, s.20(b).

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.⁶⁴

(1) Subject to this Act, a TFEC 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.

(2) For the avoidance of doubt, Subsection (1) shall not allow a TFEC to progress a bid to be responsive for purposes of award of contract.

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.

⁶⁴ Section 61 repealed and replaced by No. 13 of 2021, s.21.

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.⁶⁵

(1) Subject to this part, open bidding shall be used for all procurements unless otherwise determined by the Board through issuance of Procurement Instructions.

(2) Procurement Instructions issued under Subsection (1) shall determine other types of procurement methods which may be used for procurements.

67. CHOICE OF PROCUREMENT METHODS.⁶⁶

The Commission shall choose the appropriate procurement method determined under Section 66, to be used for each procurement in accordance with the Procurement Instructions under this Act.

68. OPEN BIDDING.⁶⁷

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

(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 do not require public advertisement.

(4) Procurements undertaken by the Commission require public advertisement through advertisement of the procurement opportunity by a notice published in at least one newspaper in national circulation in Papua New Guinea or electronic advertisement or as is otherwise specified in the Procurement Instructions under this Act.

(5) 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.

⁶⁵ Section 66 repealed and replaced by No. 13 of 2021, s.22.

⁶⁶ Ibid, section repealed and replaced, s.23.

⁶⁷ Ibid, section repealed and replaced, s.24.

National Procurement

(6) 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.

(7) The Board may approve the use of single source procurement by a public or statutory body, other than the Commission, when the object of a procurement is real property or otherwise only available from a single supplier.

69. CERTIFICATES OF INEXPEDIENCY.⁶⁸

(1) Subject to this section, the Finance Minister may, on the recommendation of the Board 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) A Certificate of Inexpediency granted under this section shall only be granted to meet the interests of the State in the event of -

- (a) an emergency declared by the Head of State on the advice of the National Executive Council created by a -
 - (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 *Public Finances (Management) Act 1995*, negotiations for a loan or the procurement of or related to a loan to a public or statutory body.

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

(4) A Certificate of Inexpediency shall not be granted in any circumstances not specified in Subsection (2), and in particular shall not be granted 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 OF CONTRACTS BY STATE SOLICITOR.⁶⁹

(1) Subject to this part, all contracts for procurements undertaken by the Commission on behalf of a public or statutory body 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.

⁶⁸ Ibid, section repealed and replaced, s.25.

⁶⁹ Ibid, section repealed and replaced, s.26.

National Procurement

(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.

(4) Subject to Section 48(3)(a) and (b) -

(a) the State Solicitor may require further documentation from the head of the department responsible for immigration and citizenship matters and the head of the department responsible for investment promotion matters, to confirm the citizenship status of an awarded bidder; and

(b) where the State Solicitor has confirmed that an awarded bidder does not meet the requirements of Section 48(3)(a) or (b), the State Solicitor may then provide independent legal advice to the Commission and public or statutory body on the next steps to take in accordance with the Act, with respect to the contract for the procurement.

(5) Subject to this section, all proposed variations to a contract drawn, approved and cleared by the State Solicitor under this section is subject to the drafting, approval and clearance by the State Solicitor when the total of all variations to the contract, including variations to the scope of work of a contract, represent a change of 10 percent or more of the original contract value.

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.

73. CONTRACT MANAGEMENT.

(1) The APC Committee may require that contract management is assigned to a third party to provide contract management services, which shall independently manage a contract on behalf of the public or statutory body.⁷⁰

⁷⁰ Subsection (1) repealed and replaced by No. 13 of 2021, s.27(a).

National Procurement

(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 APC Committee may waive a public or statutory body from compliance with this section if the APC Committee is satisfied that, in respect of a particular contract or classes of contracts, the public or statutory body has the necessary technical experience and capacity to execute the management of a contract to reasonable and sufficient standards.⁷¹

(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.

⁷¹ Ibid, repealed and replaced, s.27(b).

National Procurement

(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.

(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

National Procurement

- (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.⁷²

(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 or rescind that delegated power, role or responsibility from that person.

- (2) A delegation under this Act shall -
 - (a) be by notice in writing that -
 - (i) specifies the functions and powers that may be delegated by the person vested with the power, role or responsibility under this Act; and
 - (ii) specifies the duration of the delegation, after which it will expire; and
 - (iii) sets out the terms and conditions of the delegation that the person vested with the power, role or responsibility thinks fits; and
 - (iv) is executed by the person vested with the power, role or responsibility under this Act; and
 - (b) come into force on the day of publication in the National Gazette or the date specified in the notice, whichever occurs later.

78. OFFENCES.⁷³

(1) An offence under this Act is an offence of strict liability.

(2) Any employee of a public or statutory body or a member of the board or committee or management of a public or statutory body who enters into a contract for works, goods or services to be rendered to a public or statutory body that -

- (a) has not been procured in compliance with this Act; or
- (b) has not been authorised by the issuance of an Integrated Local Purchase Order and Claim (ILPOC) or an Authority to Pre-commit Expenditure, relating to the property or stores or works, goods or services, the subject of the claim, to the full amount of the claim, is guilty of an offence.

⁷² Section 77 repealed and replaced by No. 13 of 2021, s.28.

⁷³ Ibid, section repealed and replaced, s.29.

National Procurement

Penalty: A fine not exceeding K2, 000,000.00 or imprisonment for a period not exceeding 15 years.

(3) Any public or statutory body or a board or committee or management of a public or statutory body who enters into a contract for works, goods or services to be rendered to a public or statutory body that -

- (a) has not been procured in compliance with this Act; or
- (b) has not been authorised by the issuance of an Integrated Local Purchase Order and Claim (ILPOC) or an Authority to Pre-commit Expenditure, relating to the property or stores or works, goods or services, the subject of the claim, to the full amount of the claim, is guilty of an offence.

Penalty: A fine not exceeding K50,000,000.00.

(4) Any person who, through the exercise or use of actual, implied or ostensible authority or through any other means, renders the State or a public or statutory body liable for payments for works, goods or services that -

- (a) has not been procured in compliance with this Act; and
- (b) has not been authorised by the issuance of an Integrated Local Purchase Order and Claim (ILPOC) or an Authority to Pre-commit Expenditure, relating to goods, works or services is guilty of an offence.

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

(5) 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.

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 the 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.

(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.

National Procurement

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

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