

No. **13** of 2021.

National Procurement (Amendment) Act 2021.

Certified on : **25 OCT 2021**



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ARRANGEMENT OF SECTIONS.

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 “District Committee of the Board”
 “Provincial Committee of the Board”
 “Special Committee of the Board”
 “works”.
2. Application to public and statutory bodies (Amendment of Section 5).
3. Functions of the Commission (Amendment of Section 9).
4. Repeal and replacement of Section 12.

“12. POWERS AND FUNCTIONS OF THE BOARD WITH RESPECT TO PROCUREMENT.”.

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No. of 2021.

AN ACT

entitled

National Procurement (Amendment) Act 2021,

Being an Act to amend the ***National Procurement Act 2018*** to further 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.

1. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended -

(a) by adding after the definition of “bid documents” the following definition:

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

(b) by adding after the definition of “disposal” the following definition:

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

(c) by adding after the definition of “Procurement Instructions” the following definition:

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

(d) by adding after the definition of “services” the following definition:

““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;”; and

(e) by repealing the definition of “works” and replacing in its stead the following new definition:

““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

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- (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.”.

2. APPLICATION TO PUBLIC AND STATUTORY BODIES (AMENDMENT OF SECTION 5).

Section 5 of the Principal Act is amended by adding immediately after Subsection (2) the following new subsection:

“(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.”.

3. FUNCTIONS OF THE COMMISSION (AMENDMENT OF SECTION 9).

Section 9 of the Principal Act is amended in Subsection (2) -

- (a) adding immediately after Paragraph (a) the following new paragraph:

“(aa) to grant, sell, alienate, assign, and demise public property; and”

- (b) by repealing Paragraph (e) and replacing it with the following new paragraph:

“(e) monitor and report on the performance of the procurement systems by public and statutory bodies and advise on desirable changes; and”.

4. REPEAL AND REPLACEMENT OF SECTION 12).

The Principal Act is amended by repealing Section 12 and replacing it with the following sections:

“12. POWERS AND FUNCTIONS OF THE BOARD WITH RESPECT TO PROCUREMENT.

- (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 Commission; and

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- (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
- (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

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(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.”.

5. NEW SECTION 12A.

The Principal Act is amended by adding immediately after Section 12 the following new section:

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

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.”.

6. CHAIRPERSON OF THE BOARD (AMENDMENT OF SECTION 14).

Section 14 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(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.”.

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7. CHIEF EXECUTIVE OFFICER (AMENDMENT OF SECTION 18).

Section 18 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following new subsection:

- “(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.”.

8. COMMISSION SECRETARY (AMENDMENT OF SECTION 19).

Section 19 of the Principal Act is amended under Subsection (1) by repealing Subsection (1) and replacing it with the following new subsection:

“(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.”.

9. PROCUREMENT THRESHOLDS (AMENDMENT OF SECTION 26).

Section 26 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following new subsections:

- “(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.

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

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- (b) by repealing Subsection (4); and
- (c) by repealing Subsection (5) and replacing it with the following new subsection:

“(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.”.

10. REPEAL AND REPLACEMENT OF SECTION 28.

The Principal Act is amended by repealing Section 28 and replacing it with the following new section:

“28. CERTIFICATION OF PROCUREMENT CAPACITY.

(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.

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(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 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.”.

11. NEW PART VIIA.

The Principal Act is amended by adding immediately after Part VII the following new part:

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

Division 1. - Provincial Committees of the Board.

28A. APPLICATION OF SECTIONS 27 AND 28.

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

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28B. PROVINCIAL COMMITTEES OF THE BOARD.

(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.

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

(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.

(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.

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(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.

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.

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

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.

- (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.

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

(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.

Division 2. - District Committees of the Board.

28I. DISTRICT COMMITTEES OF THE BOARD.

(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.

(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 be 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.

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

(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.

(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.

(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

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- (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.

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

(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.

28O. ESTABLISHMENT OF SPECIAL COMMITTEES OF THE BOARD.

(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

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- (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 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.

(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 be 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.

(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.

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

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.

- (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.

(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.

(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.

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

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(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.”.

12. REPEAL AND REPLACEMENT OF SECTION 29.

The Principal Act is amended by repealing Section 29 and replacing it with the following new section:

“29. APPOINTMENT OF TECHNICAL AND FINANCIAL EVALUATION COMMITTEES.

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).”.

13. REPEAL AND REPLACEMENT OF SECTION 30.

The Principal Act is amended by repealing Section 30 and replacing it with the following new section:

“30. PROCUREMENT FOR THE PURPOSES OF THE COMMISSION.

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).”.

14. COMPOSITION OF A TFEC (AMENDMENT OF SECTION 31).

The Principal Act is amended in Section 31 -

(a) by repealing Subsections (1), (2) and (3) and replacing them with the following new subsections:

“(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.

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

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(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.”; and

(b) by adding after Subsection (4) the following new subsection:

“(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*.”.

15. REPEAL AND REPLACEMENT OF SECTION 32.

The Principal Act is amended by repealing Section 32 and replacing it with the following new section:

“32. FUNCTIONS OF A TFEC.

(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 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.”.

16. SECRETARIAL SUPPORT TO TECHNICAL AND FINANCIAL EVALUATION COMMITTEES (AMENDMENT OF SECTION 33).

Section 33 of the Principal Act is amended by deleting the words “Chief Executive Officer” and replacing them with the word “Commission”.

17. REPEAL AND REPLACEMENT OF SECTION 34.

Section 34 of the Principal Act is repealed and replaced with the following new section -

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

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

- (a) liaise with and assist the TFEC throughout the procurement to the point of recommendations being made by the TFEC; and

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- (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.
- (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.”.

18. PROCUREMENT INSTRUCTIONS, ETC. (AMENDMENT OF SECTION 45).

The Principal Act is amended in Section 45 by repealing Subsections (2), (3) and (4) replacing it with the following new subsections:

“(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.

(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.

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

19. NATIONAL RESERVATIONS AND RESTRICTIONS (AMENDMENT OF SECTION 48).

Section 48 of the Principal Act is amended -

- (a) in Subsection (3)(b) and (c) by deleting the word “K30,000,000.00” wherever appearing and replacing it with “K50,000,000.00.”; and
- (b) by repealing Subsection (4) and replacing it with the following new subsection:

“(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.”;

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(c) by inserting after Subsection (4), the following new subsection:

“(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.”.

20. REGISTRATION, QUALIFICATION AND PRE-QUALIFICATION OF BIDDERS (AMENDMENT OF SECTION 58).

Section 58 of the Principal Act is amended -

(a) in Subsection (3) by repealing Paragraph (f) and replacing it with the following new paragraph:

“(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.”.

(b) by repealing Subsection (6) and replacing it with the following new subsection:

“(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.”.

21. REPEAL AND REPLACEMENT OF SECTION 61.

The Principal Act is amended by repealing Section 61 and replacing it with the following new section:

“61. CLARIFICATIONS OF BIDS RECEIVED.

(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.”.

22. REPEAL AND REPLACEMENT OF SECTION 66.

The Principal Act is amended by repealing Section 66 and replacing it with the following new section:

“66. DETERMINATION OF PROCUREMENT METHODS.

(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.”.

23. REPEAL AND REPLACEMENT OF SECTION 67.

The Principal Act is amended by repealing Section 67 and replacing it with the following new section:

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“67. CHOICE OF PROCUREMENT METHODS

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.”.

24. REPEAL AND REPLACEMENT OF SECTION 68.

The Principal Act is amended by repealing Section 68 and replacing it with the following new section:

“68. OPEN BIDDING.

- (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.
- (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.”.

25. REPEAL AND REPLACEMENT OF SECTION 69.

The Principal Act is amended by repealing Section 69 and replacing it with the following new section:

“69. CERTIFICATES OF INEXPEDIENCY.

- (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 -

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- (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.”.

26. REPEAL AND REPLACEMENT OF SECTION 70.

The Principal Act is amended by repealing Section 70 and replacing it with the following new section:

“70. APPROVAL OF CONTRACTS BY STATE SOLICITOR.

- (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.
- (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.

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(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.”.

27. CONTRACT MANAGEMENT (AMENDMENT OF SECTION 73).

Section 73 of the Principal Act is amended -

(a) by repealing Subsection (1) and replacing it with the following new subsection:

“(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.”.

(b) by repealing Subsection (4) and replacing it with the following new subsection:

“(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.”.

28. REPEAL AND REPLACEMENT OF SECTION 77.

The Principal Act is amended by repealing Section 77 and replacing it with the following new section:

“77. DELEGATION.

(1) Subject to this Act, a person vested with a power, role or responsibility under this Act may delegate that power, role or responsibility to any person 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 fit; 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.”.

29. REPEAL AND REPLACEMENT OF SECTION 78.

The Principal Act is amended by repealing Section 78 and replacing it with the following new section:

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“78. OFFENCES.

(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.

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; 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 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.

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(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.”.

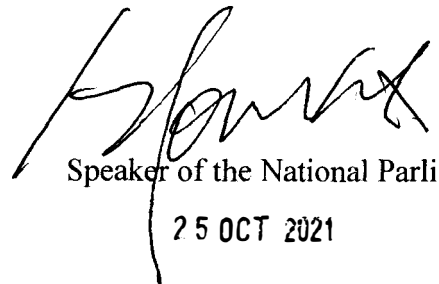
I hereby certify that the above is a fair print of the ***National Procurement (Amendment) Act 2021***, which has been made by the National Parliament.



Clerk of the National Parliament.

25 OCT 2021

I hereby certify that the ***National Procurement (Amendment) Act 2021***, was made by the National Parliament on 13 September 2021, by an absolute majority in accordance with the ***Constitution***.



Speaker of the National Parliament.

25 OCT 2021