

Public Finances (Management)

PART VII. - STATE TENDERS AND CONTRACTS.

38A. APPLICATION OF THIS PART.

This Part does not apply to transactions contemplated by the Option Agreement (as defined in the *Mineral Resources Development Company Pty Ltd (Privatisation) Act 1996*).

(Section 38A added by No. 3 of 1996)

39. CENTRAL SUPPLY AND TENDERS BOARD.

(1) The Central Supply and Tenders Board is hereby established to control and regulate –

- (a) the purchase and disposal of property and stores; and
- (b) the supply of works and services,

other than those in relation to which specialized Supply and Tenders Boards have been established under Section 39A, for and on behalf of the State.

(2) In the exercise of its powers under Subsection (1), the Central Supply and Tenders Board may –

- (a) invite a tender for any amount; and
- (b) enter into a contract for any amount up to K10,000,000.00,

for and on behalf of the State.

(3) The Central Supply and Tenders Board shall consist of six members comprising:-

- (a) the Departmental Head of the Department responsible for finance matters (the Deputy Departmental Head to be his alternate), ex officio; and
- (b) the Departmental Head of the Department responsible for works matters (the Deputy Departmental Head (Policy) to be his alternate), ex officio; and
- (c) the Departmental Head of the Department responsible for trade and industry matters (the Deputy Departmental Head (Policy) to be his alternate), ex officio; and
- (d) the State Solicitor (the Deputy State Solicitor to be his alternate), ex officio; and
- (e) two persons (and their alternates) who have unimpeachable and impeccable reputations and have relevant experiences or demonstrated understanding of commercial and/or actual procurement/contracting practices nominated by the Universities; and
- (f) a person (and his alternate) who has an unimpeachable and impeccable reputation and has relevant experience or demonstrated understanding of commercial and/or actual procurement/contracting practices nominated by the Papua New Guinea Chamber of Commerce and Industry.

(4) Where the Minister agrees with a nomination for membership of the Central Supply and Tenders Board under Subsection (2)(e) or (f) from a list of three nominees submitted by each of the organizations concerned, the nominee approved by the Minister

—

- (a) shall be appointed as a member of the Central Supply and Tenders Board by the Minister by notice in the National Gazette; and
- (b) shall be appointed for a period of three years; and
- (c) holds office upon such terms and conditions as are determined by the Minister by notice in the National Gazette; and
- (d) is eligible for re-appointment.

(5) The Head of State, acting on advice, may, by notice in the National Gazette, appoint a member of the Central Supply and Tenders Board to be the Chairman of the Board, and, where the member so appointed as Chairman is not an *ex officio* member, he—

- (a) shall be appointed for a period of three years; and
- (b) shall be on full-time employment upon such terms and conditions as are determined by the Head of State, acting on advice.

(6) At a meeting of the Central Supply and Tenders Board —

- (a) the Chairman or, in his absence, a person appointed by the members from their number as chairman 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; and
- (d) the quorum shall be four members of whom at least one shall be a non-public office holder and no more than two are alternates; and
- (e) the procedures of the meeting are as determined by the Board.

(7) The —

- (a) Head of State, acting on advice, in the case of the Chairman; or
 - (b) the Minister, in the case of a member other than an *ex officio* member,
- may terminate the appointment of that Chairman or that member, as the case may be —
- (c) for ill health, incompetence or impropriety; and
 - (d) only after the receipt by him of a report on the reason for the proposed termination.

(8) The Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing —

- (a) the manner of inviting tenders publicly; and
- (b) the method of dealing with tenders; and
- (c) the criteria to be applied in the evaluation of tenders; and
- (d) the appointment by the Board of advisers in technical matters; and
- (e) the keeping by the Boards of records of the performance of each successful tenderer; and
- (f) the manner of regulating the disposal of property no longer required by

- the State; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of goods and services; and
- (h) the manner in which the Board shall supervise the operations of other Tender Boards established under Sections 39A and 39B.

(Section 39 repealed and replaced by 16 of 2003)

39A. OTHER SPECILIZED NATIONAL SUPPLY AND TENDERS BOARDS.

(1) The Minister may, by notice in the National Gazette, establish such number of other national Supply and Tenders Boards for specific –

- (a) technical or specialized purposes; or
- (b) purposes related to natural or man-made disasters that warrant the establishment of special Supply and Tenders Boards,

as he, on the advice of the Departmental Head of the Department responsible for financial management, thinks necessary to control and regulate, in respect of such technical or specialized purposes or disasters –

- (c) the purchase and disposal of property and stores; and
- (d) the supply of works and services,

for any amount up to K1,000,000.00 or such lesser amount as the Minister may determine by notice in the National Gazette, for and on behalf of the State.

(2) The Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing, in relation to a Board established under Subsection (1) –

- (a) the procedures for meetings of the Board including fixing of quorum; and
- (b) the manner of inviting tenders publicly; and
- (c) the method of dealing with tenders; and
- (d) the criteria to be applied in the evaluation of tenders; and
- (e) the appointment by the Board of advisers in technical matters; and
- (f) the keeping by the Board of records of the performance of each successful tenderer; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of works and services; and
- (h) the manner of regulating the disposal of property and stores no longer required by the State.

(3) The Minister may, from time to time, issue to Boards established under Subsection (1) policy directions as to the giving of preference to national tenderers and local manufacturers, and such directions shall be binding on Boards.

(4) In the event of the absence of a member of a Board from a meeting of the Board or his inability for any reason to act in relation to a matter, his alternate has and may exercise and perform all his powers and functions for the purpose of that meeting or in relation to that matter.

(5) The Minister may, at any time, by written notice to a member or the alternate of a member, remove the member or alternate, as the case may be, and appoint another in his place.

(Section 39A inserted by 16 of 2003)

39B. PROVINCIAL SUPPLY AND TENDERS BOARDS.

(1) The Minister may, by notice in the National Gazette, establish such number of Provincial Supply and Tenders Boards as he, on the advice of the Departmental Head of the Department responsible for financial management, thinks necessary to control and regulate –

- (a) the purchase and disposal of property and stores; and
- (b) the supply of works and services,

for any amount up to K3,000,000.00 or such lesser amount as the Minister, on the advice of the Central Supply and Tenders Board, may determine by notice in the National Gazette, for and on behalf of the State in the provinces.

(2) A Provincial Supply and Tenders Board shall comprise the following:-

- (a) the Provincial Administrator (the Deputy Provincial Administrator to be his alternate), **ex officio**, who shall be the Chairman; and
- (b) the Provincial Works Manager (the Advisor Technical Services to be his alternate), **ex officio**; and
- (c) the Advisor Planning and Budgeting (the Deputy Advisor Planning and Budgeting to be his alternate), **ex officio**, and
- (d) the Provincial Treasurer (the Provincial Expenditure Accountant to be his alternate), **ex officio**; and
- (e) a member (and his alternate) who has an unimpeachable and impeccable reputation and has relevant experience or demonstrated understanding of commercial and/or actual procurement/contracting practices nominated by the Provincial Chamber of Commerce or, where there is no such body, the Papua New Guinea Business Council.

(3) Where the Minister agrees with a nomination for membership of a Provincial Supply and Tenders Board under Subsection (2)(e) from a list of three nominees submitted by the organization concerned, the nominee approved by the Minister –

- (a) shall be appointed as a member of the Provincial Supply and Tenders Board by the Minister by notice in the National Gazette; and
- (b) shall be appointed for a period of three years; and
- (c) holds office upon such terms and conditions as are determined by the Minister by notice in the National Gazette; and
- (d) is eligible for re-appointment.

(4) At a meeting of a Provincial Supply and Tenders Board –

- (a) the Chairman or, in his absence, a person appointed by the members from their number as chairman 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; and
- (d) the quorum shall be three members; and
- (e) the procedures of the meeting are as determined by the Board.

(5) The Minister may at any time terminate the appointment of a member of a Provincial Supply and Tenders Board, other than an *ex officio* member, for ill health, corruption, incompetence or impropriety and may appoint another person in his place.

(6) In respect of Provincial Supply and Tenders Boards established under Subsection (1), the Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing –

- (a) the manner of inviting tenders publicly; and
- (b) the method of dealing with tenders; and
- (c) the criteria to be applied in the evaluation of tenders; and
- (d) the appointment by the Boards of advisers in technical matters; and
- (e) the keeping by the Boards of records of the performance of each successful tenderer; and
- (f) the manner of regulating the disposal of property no longer required by the State; and
- (g) the method of obtaining and dealing with quotations for –
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of goods and services.

(Section 39B inserted by 16 of 2003)

40. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

- (1) Subject to -
 - (a) this section; and
 - (b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

(2) In relation to the purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

(3) The preceding provisions of this section do not apply to the purchase or disposal of property or stores or the supply of works and services -

- (a) that are to be purchased from, disposed of to, or executed or performed by -
 - (i) a public body or an authority or instrumentality of the State approved for the purpose by the Minister; or
 - (ii) a Provincial Government; or

- (iii) a Local-level Government; or
 - (iv) an approved overseas agency; or
 - (b) in respect of which a Board certifies that the inviting of tenders is impracticable or inexpedient; or
 - (c) where, in individual transactions involving amounts not exceeding K500,000.00, the Minister in his discretion considers that there is a natural disaster or it is not expedient or proper to call public tenders and, prior to the goods or services being provided, by certificate in writing narrates these circumstances and waives the provisions of this section; or
- (Paragraph (c) repealed and replaced by No.5 of 1996)**
- (d) where the terms of an agreement concluded, or proposed to be concluded, with any international organization under which the State is to receive moneys, make specific provision for the manner in which tenders will be invited for contracts to be performed in relation to the agreement.

(4) In Subsection (3)(a)(iv), “approved overseas agency” means the government, a government department, a government instrumentality or a statutory corporation of a country other than Papua New Guinea approved by the Minister by notice in the National Gazette.

(5) In relation to contracts for the supply of works and services, the provisions of this section and of Section 41 shall apply to -

- (a) turnkey contracts; and
- (b) build-operate transfer contracts; and
- (c) contracts which in substance are similar to turnkey contracts or build-operate transfer contracts; and
- (d) contracts involving the expenditure of public moneys.

(Subsection (5) added by No. 14 of 1998)

41. PREFERENCE TO NATIONAL TENDERERS.

Where a Board is satisfied that the value of a contract is not likely to exceed K1,000,000.00 or such lesser amount as the Minister directs, it may by written order direct that tenders be restricted to national tenderers (in which case the provisions of Section 40 apply to that contract).

42. CONSIDERATION OF TENDERS.

(1) Where under this Part tenders have been invited, the Secretary of the Board concerned shall, as soon as possible after the closing date for the receipt of tenders, prepare for the Chairman details in schedule form of the tenders received for presentation to the Board at the meeting at which the tenders are to be considered.

(2) The Board shall co-opt, or seek the advice of, persons with specialized knowledge to assist the Board in its consideration of tenders received.

(3) The Board shall consider a tender in the light of conditions of tender and the specifications and plans (if any) of the matter or thing in respect of which tenders were invited and shall apply to the consideration of all tenders the criteria supplied by the Minister.

(4) Any representations by a tenderer to amend his tender after the closing time for tenders shall be immediately reported to the Board.

(5) In examining a tender, the Board shall give consideration to the capacity, experience, integrity, financial status and past performance of the tenderer and such other matters as it thinks relevant.

(6) Where -

(a) the amount of the most cost-effective tender -

(i) exceeds the upper limit of authority of the Board specified under Section 39(2)(a),

(ii) ***(Subparagraph (ii) repealed No.5 of 1996),***

the Chairman of the Board shall refer that tender to the Small Contracts Award Board to be dealt with in accordance with Section 43.

(This subsection is rendered ineffective by the repeal of Section 43 by No. 5 of 1996)

(7) ***(Subsection (7) repealed by No. 5 of 1996).***

(8) Where, in the opinion of the Board, it is in the best interests of the State to do so, the Board may, subject to directions issued by the Minister under Section 39 -

(a) where the amount of the tender does not exceed the prescribed amount -

(i) accept a tender; and

(ii) reject all other tenders,

and the reasons for the acceptance and rejection shall be detailed in the minutes of the meeting of the Board; and

(b) where the amount of the tender exceeds the prescribed amount recommend to the Minister responsible -

(i) the acceptance of the tender; and

(ii) the rejection of all other tenders,

and the reasons for the recommendation shall be detailed in the minutes of the meeting of the Board.

(9) Where a Minister receives a recommendation from a Board under Subsection (8)(b), he shall submit to the National Executive Council the recommendation together with particulars of other tenders received and the National Executive Council shall decide which tender shall be accepted.

(10) Where, after consideration of the tenders -

(a) two or more tenders appear satisfactory; and

(b) in the opinion of the Board, there is no advantage to the State in

preferring a particular satisfactory tender over the other satisfactory tenders,

the Board -

- (c) where the amount of a tender does not exceed the prescribed amount, may accept one or more tenders except that the Board may, in its discretion and to ensure as far as practicable a fair division of business within an area where it is satisfied that the action is warranted, divide the acceptance between two or more satisfactory tenders, and in any such case the reasons for the acceptance shall be detailed in the minutes of the Board; or
- (d) where the amount of a tender exceeds the prescribed amount, shall recommend to the Minister responsible the acceptance of a satisfactory tender except that the Board may, in its discretion and to ensure as far as practicable a fair division of business within an area, where it is satisfied that the action is warranted, recommend to the Minister responsible the division of acceptance between two or more of the satisfactory tenders, and in any such case the reasons for the recommendation shall be detailed in the minutes of the meeting of the Board and in the recommendation.

(11) Where a Minister receives a recommendation under Subsection (10)(d), he shall submit to the National Executive Council the recommendation together with particulars of all tenders received and the National Executive Council shall decide which tender or tenders shall be accepted.

(12) Nothing in this section derogates from any other provisions of this Act or from any other law requiring a written contract or agreement to be entered into in respect of the subject of a tender.

43. SMALL CONTRACTS AWARD BOARD.

(Section 43 repealed by No. 5 of 1996).

44. FORM OF RECOMMENDATION BY BOARD.

Subject to Section 42(6), a recommendation by the Board shall be -

- (a) in the form of a submission containing the reasons for the recommendation; and
- (b) accompanied by -
 - (i) the tender notice; and
 - (ii) the conditions of tender; and
 - (iii) specifications and plans (if any) of the matter or thing in respect of which tenders were invited; and
 - (iv) the tenders received and considered.

45. NOTICE OF SUCCESSFUL TENDER.

After notice of the acceptance of his tender has been communicated to a successful tenderer, the Chairman of the Board shall cause notice of the acceptance of the tender to

be -

- (a) sent to all other tenderers for the matter or thing to which the tender relates; and
- (b) published in the National Gazette.

46. SECRECY.

A member of a Board, the Secretary of a Board, a witness and a person co-opted to give advice to or assist the Board shall not discuss or divulge the contents of a tender in respect of any matter or thing, except in the course of -

- (a) recording details of the tender in the Tenders Register; or
- (b) preparing a notice of acceptance of a late tender; or
- (c) giving advice to the Board on the tender; or
- (d) consideration of the tender at a meeting of the Board; or
- (e) making a recommendation that involves reference to the tender; or
- (f) causing notice of the acceptance of the tender to be sent to other tenderers or published in the National Gazette.

47. EXECUTION, ETC., OF STATE CONTRACTS.

(Heading repealed and replaced by No. 14 of 1998)

(1) Subject to Section 42(6), where there is no provision in any law as to the person or authority empowered to execute a contract or agreement on behalf of the State, that contract or agreement may be executed -

- (a) by the Head of State, acting on advice; or
- (b) where the amount of the consideration does not exceed K5,000,000.00, by the Minister; or

(Paragraph (b) amended by No. 5 of 1996)

- (c) where the amount of the consideration does not exceed an amount (not exceeding K5,000,000.00) specified by the Minister, by the Chairman of the Tenders Board which considered the tender leading to the contract or agreement.

(Paragraph (c) amended by No. 5 of 1996)

(2) Subject to Section 42(6), where a contract or agreement was executed by a Minister or the Minister or by the Head of State, acting on advice, or by the Chairman of a Tenders Board any variation thereto may be executed by the Minister or by the Head of State, acting on advice.

(3) Where the amount of the consideration of a contract or agreement to which the State is a party exceeds K5,000,000.00, the Minister shall cause a copy of the contract or agreement to be laid before the first sitting of the Parliament after execution of the contract or agreement.

(Subsection (3) added by No. 14 of 1998)

47A. OFFENCES.

A Departmental Head, Provincial Administrator, head of a public body or other officer who authorizes or permits a breach of procedures relating to the -

(a) calling, consideration and awarding of tenders; or

(b) the execution of a state contract,

is for the purposes of the ***Public Services (Management) Act 1995*** or any contract entered into under that Act, guilty of a serious disciplinary offence.

(Section 47A added by No. 14 of 1998)

47B. AUTHORITY TO PRE-COMMIT EXPENDITURE.

(1) The Departmental Head of the Department responsible for financial management may issue to a Departmental Head an Authority to Pre-commit Expenditure in relation to the purchase of property or stores or to the supply of goods or services where the Departmental Head of the Department responsible for financial management is satisfied that –

(a) in the case of proposed expenditure exceeding K100,000.00 –

(i) the provisions of this Part have been complied with in relation to the purchase or supply; and

(ii) funds will be available to meet the proposed schedule of payments for the purchase or supply; and

(b) in the case of proposed expenditure not exceeding K100,000.00, the circumstances of the proposed expenditure are such that it is appropriate to authorize the Department, to the Departmental Head of which the Authority to Pre-Commit Expenditure was granted, to enter into a contract for the purchase of property or stores or for the supply of goods or services notwithstanding that the full amount of funds to meet the payment required under the contract is not immediately available.

(2) An Authority to Pre-Commit Expenditure under Subsection (1) shall specify –

(a) the purchase of property or stores or the supply of goods or services to which it relates; and

(b) the maximum amount to which the Authority extends.

(3) An Authority to Pre-commit expenditure under Subsection (1) authorizes the Department, to whose Departmental Head the Authority was issued, to enter into a contract for the purchase of property or stores or for the supply of goods and services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority.”.

(Section 47B added by No. 48 of 2002)

47C. CERTAIN CONTRACTS NULL AND VOID.

(1) In this section –

“Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure issued under Section 47B;

“Integrated Local Purchase Order and Claim (ILPOC)” means an Integrated Local Purchase Order and Claim issued in accordance with the Financial Instructions.

(2) A contract for the purchase of property or stores or for the supply of goods or services entered into, or purported to have been entered into, by or on behalf of the State, in respect of which purchase or supply –

(a) in the case of proposed expenditure exceeding K100.000.00, the provisions of this Part have not been complied with in relation to the purchase or supply; or

(b) in the case of proposed expenditure not exceeding K100.000.00, no Authority to Pre-Commit Expenditure has been granted or no Integrated Local Purchase Order and Claim has been issued,

is null and void.

(3) The provisions of this section apply in respect of contracts entered into, or purported to have been entered into, by or on behalf of the State, on or after 1 January 2003.

(Section 47C added by No.48 of 2002)

47D. CLAIM AGAINST STATE NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

(1) In this section –

“Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure issued under Section 47B;

“Integrated Local Purchase Order or Claim (ILPOC)” means an Integrated Local Purchase Order or Claim issued in accordance with the Financial Instructions.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods or services to the State shall not be enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods or services produces –

(a) a properly authorized Integrated Local Purchase Order or Claim (ILPOC); or

(b) an Authority to Pre-commit Expenditure, relating to the property or stores or goods or services, the subject of the claim, to the full amount of the claim.

(3) The provisions of this section apply where the property or stores were purportedly sold to the State or the goods or services were purportedly supplied to the State on or after 1 January 2003.

(Section 47D added by No. 48 of 2002)