



# NATIONAL PROCUREMENT ACT PROCUREMENT INSTRUCTION

06/2019

1<sup>ST</sup> April 2019

**SUBJECT: HANDLING OF INCOMPLETED PROCUREMENTS AS AT 1<sup>ST</sup> APRIL 2019**

## **1.0 INTRODUCTION**

### **1.1 Authority**

This Procurement Instruction (hereafter PI), is issued under Section 45(2) of the National Procurement Act (hereafter NPA) whereby the National Procurement Commission (hereafter NPC) or the APC Committee (APCC) may issue Procurement Instructions or Guidelines, not inconsistent with the Act, which are necessary or desirable for carrying out or giving effect to the Act and in general for the better control and management of procurement.

### **1.2 Legality & Enforcement**

Pursuant to section 9 of the NPA, the NPC has control and direction of all matters relating to the management of the procurements of the State.

## **2.0 PURPOSE**

### **2.1 Handling of current and on-going procurements not completed by public and statutory bodies, the Central Supply and Tender Board (CSTB), Provincial Supply and Tender Boards (PSTBs), District Supply and Tender Boards (DSTBs) and Specialised Tender Boards (STBs)**

As at the commencement of the NPA on 1<sup>st</sup> April 2019, public and statutory bodies, the Central Supply and Tender Board (CSTB), Provincial Supply and Tender Boards (PSTBs), District Supply and Tender Boards (DSTBs) and Specialised Tender Boards (SSTBs) had procurements (hereinafter incomplete procurements) that have not yet been made the subject of executed contracts.

The purpose of this PI is to mandate the process of the handling of those procurements. This PI applies to all procurements by any public or statutory body, irrespective of the value of those procurements.

Procurement is limited under this PI as procurement that has commenced or will commence but has not had a contract awarded or executed.

Where this PI provides for procurement to continue under the NPC, a new NPC registration number must be issued for the procurement. No prior public and statutory bodies, CSTB, PSTBs, DSTBs and SSTBs referencing or numbering can be used from 1 April 2019.

## **2.2 Incomplete Procurements Solely Funded by the FY 2018 National Budget**

2.2.1 Subject to this PI, any incomplete procurement funded solely by appropriations contained in the FY2018 National Budget, other than a Provincial Government, are to be terminated and no further action may be taken, as the appropriations expired on 31 December 2018.

2.2.2 Subject to this PI, any incomplete procurement by a statutory body, funded solely by the FY2018 National Budget where the funds have been released to the statutory body, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does not exceed the appropriation contained in the FY2018 National Budget or the amount released to the statutory body under that appropriation, whichever is the lesser. If the contract exceeds either the appropriation contained in the FY2018 National Budget or the amount released to the statutory body under that appropriation, the incomplete procurement is terminated and the funds remitted immediately to the Consolidated Revenue Fund (CRF).

2.2.3 Subject to this PI, any incomplete procurement by a Provincial Government, funded solely by the FY2018 National Budget where the funds have been released to the Provincial Government, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does not exceed the appropriation contained in the FY2018 National Budget or the amount released to the Provincial Government under that appropriation, whichever is the lesser. If the contract exceeds either the appropriation contained in the FY2018 National Budget or the amount released to the Provincial Government under that appropriation, the incomplete procurement is terminated and the funds remitted immediately to the CRF.

2.2.5 Subject to this PI, any incomplete procurement by a Provincial Government, to be funded solely by the Provincial Government by grants appropriated by the FY2018 National Budget where the funds have been released to the Provincial Government, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does not exceed the appropriation contained in the FY2018 Provincial Budget. If the contract exceeds either the appropriation contained in the FY2018 Provincial Budget, the incomplete procurement is terminated.

2.2.6 Subject to this PI, any incomplete procurement by a District Development Authority or a District Supplies and Tender Board, to be funded solely by the District Development Authority or a District Supplies and Tender Board by grants appropriated by the FY2018 National Budget where the funds have been released to the District Development Authority, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does

not exceed the appropriation contained in the FY2018 District Development Authority Budget. If the contract exceeds the appropriation contained in the FY2018 District Development Authority, the incomplete procurement is terminated.

## **2.3 Incomplete Procurements Partly Funded by the FY 2018 National Budget**

2.3.1 Subject to this PI, any incomplete procurement funded partly by appropriations contained in the FY2018 National Budget may be completed and the contracts executed in accordance with this PI and the NPA, provided that the contract does not exceed the amount of the incomplete procurement that is not funded by the FY2018 National Budget appropriation. The public or statutory body must be able to demonstrate to the APCC and NPC that the funding, other than appropriations contained in the FY2018 National Budget, to satisfy that part of the incomplete procurement is immediately available. No such contract shall be executed without the express written authority of the APCC.

2.3.2 Subject to this PI, any incomplete procurement by a public body, other than a Provincial Government, funded partly by the FY2018 National Budget where the funds have been released to the public body, are to be terminated and the funds remitted immediately to the Consolidated Revenue Fund (hereafter the CRF). As the FY2018 National Budget contained no authorisation pursuant to Section 16(2) of the Public Finances (Management) Act (hereafter the PFMA) allowing for the transfer of appropriated funds from the CRF to a Trust Account, any public body that transferred those funds to a Trust Account shall remit those funds to the CRF immediately.

2.3.3 Subject to this PI, any incomplete procurement by a statutory body, funded partly by the FY2018 National Budget where the funds have been released to the statutory body, may be completed provided that the contract does not exceed the amount of the incomplete procurement that is not funded by the FY2018 National Budget appropriation. The statutory body must be able to demonstrate to the APCC that the funding, other than appropriations contained in the FY2018 National Budget, to satisfy that part of the incomplete procurement is immediately available. No such contract shall be executed without the express written authority of the APCC.

2.3.4 Subject to this PI, any incomplete procurement by a Provincial Government, partly funded by the FY 2018 National Budget where the funds have been released to the Provincial Government, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does not exceed the appropriation contained in the FY2018 National Budget or the amount released to the Provincial Government under that appropriation, whichever is the lesser. If the contract exceeds either the appropriation contained in the FY2018 National Budget or the amount released to the Provincial Government under that appropriation, the incomplete procurement is terminated and the funds remitted immediately to the CRF.

2.3.5 Subject to this PI, any incomplete procurement by a Provincial Government, to be funded partly by the Provincial Government by grants appropriated by the FY2018 National Budget where the funds have been released to the Provincial Government, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does not exceed the appropriation contained in the FY2018 Provincial Budget. If the contract exceeds either the appropriation contained in the FY2018 Provincial Budget, the incomplete procurement is terminated.

2.3.6 Subject to this PI, any incomplete procurement by a District Development Authority or a District Supplies and Tender Board, to be funded partly by the District Development Authority or a District Supplies and Tender Board by grants appropriated by the FY 2018 National Budget where the funds have been released to the District Development Authority, may be completed and the contracts executed in accordance with this PI and the NPA provided that the contract does not exceed the appropriation contained in the FY2018 District Development Authority Budget. If the contract exceeds the appropriation contained in the FY 2018 District Development Authority, the incomplete procurement is terminated.

### **3.0 Incomplete Procurements Funded in Solely or Partly by Funds Held in Trust Accounts**

3.1 All incomplete procurements, irrespective of value, that result in contracts that are to be funded solely or partly by funds held in trust accounts shall not be executed without the prior written approval of the APCC.

3.2 Prior to granting an approval under this Clause, the APCC shall satisfy itself that the funds held in the trust account are lawfully available for the purpose of meeting the expenditure under the contract.

### **4.0 Incomplete Procurements - Avoidance of Contract Splitting**

4.1 All incomplete procurements, of a value of less than or equal to K500,000, shall not be executed without the prior written approval of the NPC Board if –

(a) the recipient of the contract has a concurrent or back to back contract where the substance of this contract is for similar goods or services where the total of multiple contracts exceed K500,000;

### **5.0 Execution of Procurement Contacts Post 1<sup>st</sup> April 2019**

5.1 All procurements authorised to be executed by a public or statutory body on or after 1st April 2019 shall be executed in accordance with the NPA.

5.2 All incomplete procurements that result in contracts greater than or equal to K500,000 in value to be executed on or after 1st April 2019 shall be executed by -

- (a) the Chairperson of the NPC Board;
- (b) at a provincial level, the Chairman of the Provincial Committee of the Commission; or
- (c) at a local-level, the Chairman of the Local-Level Committee of the Commission; or
- (d) at a district level, the Chairman of the District Committee of the Commission.
- (e) by the Chairman of a Special Committee of the Commission

5.3 As required by the NPA, all incomplete procurements that result in contracts greater than or equal to with a value in excess of K10,000,000.00, or such other higher amount as may be approved by the National Executive Council, shall be approved and awarded by the National Executive Council and only upon recommendation by the NPC Board, and shall be executed by the Head of State, acting on advice, of the National Executive Council.

5.4 As required by the NPA, all incomplete procurements that result in contracts, irrespective of value, shall not be executed unless the contract has first received the legal clearance in writing from the State Solicitor under the NPA.

## 6.0 ENFORCEMENT

6.1 Non-compliance with this and other PIs issued under the *National Procurement Act*, will invoke appropriate sanctions and/or penalties prescribed under the Act and/or under other relevant laws.

## 7.0 EFFECTIVE DATES OF THIS PROCUREMENT INSTRUCTION

This Procurement Instruction is effective as of the date of signing by the Chairman of the Board of the NPC.

## 8.0 HELP DESK

Should you require further information the following should be contacted:

[helpdesk@procurement.gov.pg](mailto:helpdesk@procurement.gov.pg)



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**Date:** 1<sup>st</sup> April 2019

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