

National Procurement Act

Certificate of Inexpediency

Guidelines



About this Guideline

The Certificate of Inexpediency Guideline has been produced with the support of the European Union under the Technical Cooperation Facility funded by the 11th EDF.

Authority and Enforcement

The Guideline has been issued under Section 45 of the National Procurement Act 2018 (NPA) to support any instruction, guideline or manual (herein instructions) issued under Section 45 of the Act.

Disclaimer

This guidance document supports agencies, APCC Secretariat and NPC with the requirements for issuing Certificate of Inexpediency.

All officers of public and statutory bodies must ensure that procurement activities undertaken comply with the NPA, PFMA and associated instructions. This information can be found on the Government of PNG procurement website www.procurement.gov.pg.

This current guide is a **draft only**. Feedback on this guide can be emailed to info@npc.gov.pg by Friday, 8 November 2019 for inclusion in version 1.0.

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Definition of Certificate of Inexpediency

A Certificate of Inexpediency is defined under Section 69 of the National Procurement Act as approval to use a procurement method other than open bidding. An agency can apply for a Certificate of Inexpediency and this will be considered and granted by the NPC Board if it meets the interests of the State in the event of:

- (a) an emergency declared by the National Executive Council created by:
 - (i) civil disturbance; or
 - (ii) natural disaster; or
 - (iii) health emergency; or
 - (iv) matters relating to national security or defence emergency; or
- (b) subject to the terms of the Public Finances Management Act, negotiations for a loan or the procurement of a loan to a public or statutory body

It does not exempt an agency from all aspects of the National Procurement Act, it provides an approval to adopt a variation to a procurement method other than open bidding via tender

Regardless of the method of procurement, there are still aspects of the procurement that must be met when a Certificate of Inexpediency is issued. The terms of the Certificate of Inexpediency will outline what elements of the procurement process has been varied and should be specific.

Principles applied to procurement with a Certificate of Inexpediency

Where a Certificate of Inexpediency is granted, the procurer is still expected to ensure procurement considers:

- I. appropriate technical expertise to assist in the evaluation of quotes, proposals or other criteria necessary to identify the right supplier;
- II. a procurement approach that offers best chance of fairness, transparency and value for money in the given circumstances
- III. and adopts communication and actions that ensure that no supplier should be given an unfair advantage within the process

Declared emergency and the need for a Certificate of Inexpediency

A separate guideline will be issued for emergency procurement and reflects how procurement should be considered during various stages of an emergency. Emergencies have varying stages of response such as immediate response, disaster relief followed by post-reconstruction efforts.

A Certificate of Inexpediency is not necessarily required during all stages. For example, immediate response is procurement to react instantaneously to a disaster when there is still a threat to human life or critical or catastrophic failures to infrastructure or the environment. When issued, these guidelines will provide more appropriate advice to agencies on when a Certificate of Inexpediency should be sought.

Steps in the applying for a Certificate of Inexpediency

Certificate of Inexpediency can only be issued by the NPC Board and these procurement powers have not been delegated to any other body including Provincial and District committees of the NPC.

The NPC Board only has the power to issued a Certificate of Inexpediency prior to procurement. This does not mean that an agency cannot research the market and suppliers. It is expected that an agency has undertaken research on the nature and source of supply is enable the NPC Board to make an informed decision about the issuance of a Certificate of Inexpediency.

A Certificate of Inexpediency cannot be issued retrospectively. It can only be used to prior to commencement of the procurement.

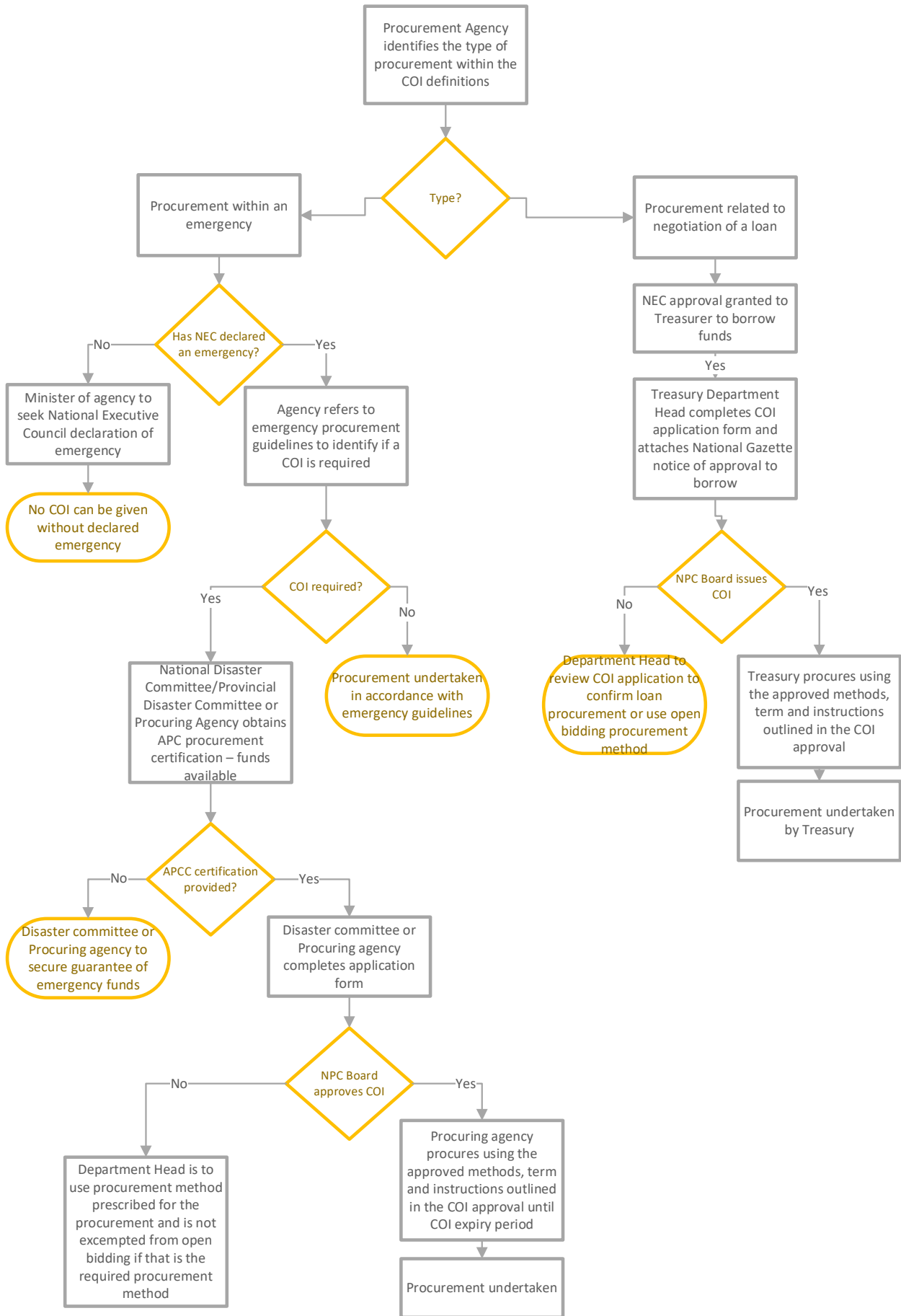
Where an agency has established that there is a need for a Certificate of Inexpediency, they may need to obtain a certification from the APC Committee that funds are available. For procurement of finance, the Treasurer seeks approval by the National Executive Council and does not required an additional certification from the APC Committee.

It is not a requirement of the Certificate of Inexpediency process that the procurement has been firstly approved as part of an agency's procurement plan submitted under Section 25 of the National Procurement Act.

A Certificate on Inexpediency is not issued on the basis that the agency has failed to plan the timing of the procurement and is left with an unforeseen or urgent requirement to purchase. It is obligatory that agencies plan for contingencies and manage risk so that they are able to address unforeseen events. For example, establishing a supply panel arrangements for strategic goods, services or works where timing of need cannot be identified.

The Certificate of Inexpediency must be lodged on the approved form to ensure that all necessary information related to the request has been provided to the NPC Board to deliberate. This form has been issued with Procurement Instruction 22/2019 Procurement by Limited Procurement Method

The steps for obtaining a certificate are:



Procurement with a Certificate of Inexpediency issued for an emergency

The NPC Board has wide powers when issuing a Certificate of Inexpediency to ensure the necessary flexibility to meet the size and nature of emergencies. It can cover such needs as:

1. A Certificate issued for a specific procurement or blanket procurement of a value for all procurement, particularly when related to an emergency
2. The duration of the Certificate's application
3. The process and responsibility to award and execute contracts, if required
4. Options for sourcing
5. Allowable alternatives to contracts

Procurement related to negotiations of borrowings, guarantees and loans

The procurement of financing is governed by the Public Finances Management Act and excluded from the National Procurement Act. However, there can be related procurements of agreements that are entered into by the State to support financing and these are the subject to a Certificate of Inexpediency. These procurements can include engagement of technical services including financial, legal and assurance services, printing and advertising to name a few.

The procurement of financing instruments may not be directly evident and may be part of a larger and more complex solution such as a public-private partnership agreement.

Information required for a Certificate of Inexpediency

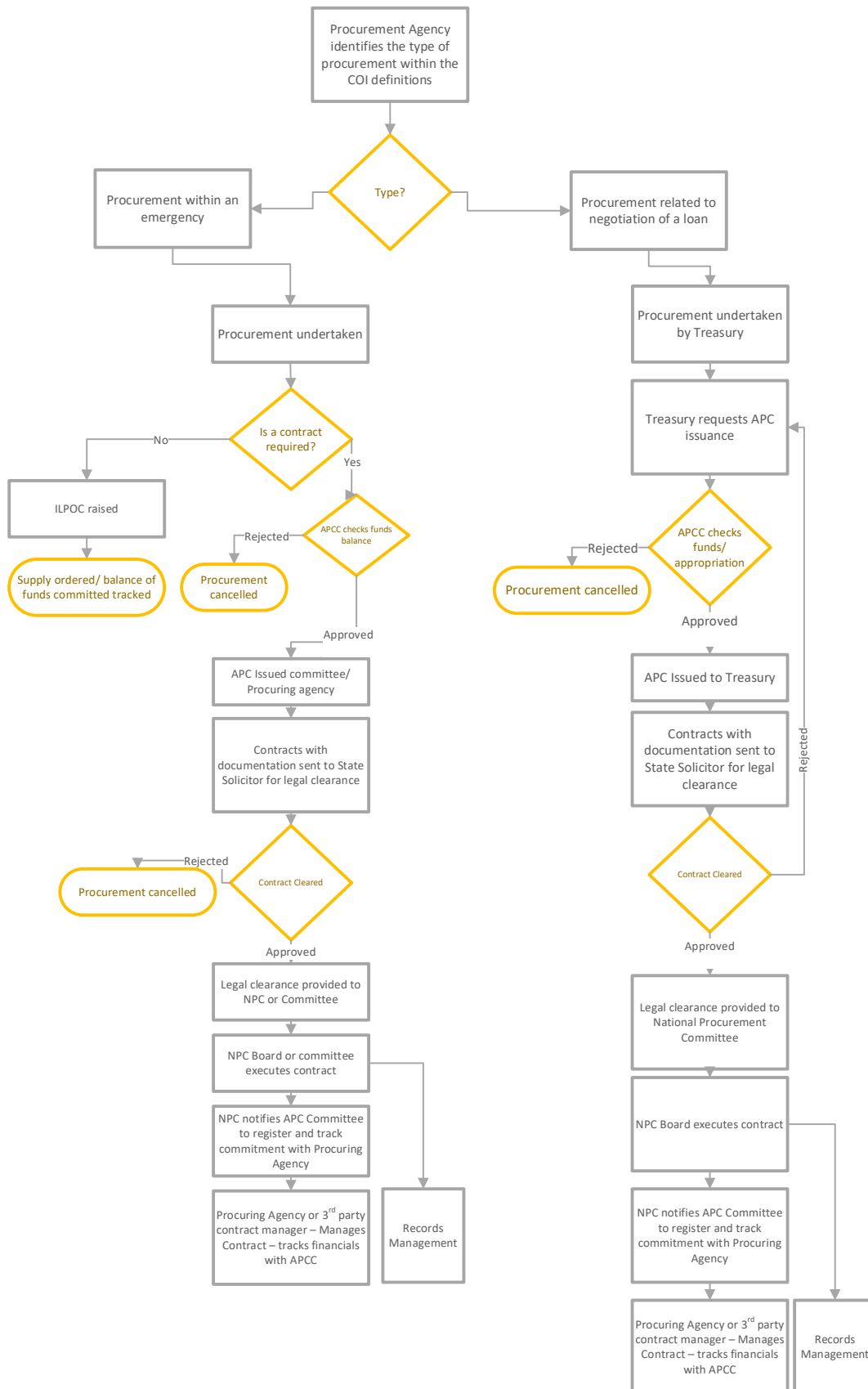
The appropriate delegate, usually the Department Head, will be the person required to lodge the Request for a Certificate of Inexpediency.

Information attached to the Certificate of Inexpediency will be dependent on the application made. In all cases, there is National Executive Council declaration of emergency or approval to proceed to obtain financing. The details of this approval and the Council's decision will be attached to the Request.

In some instances, such as post-restoration works, the agency may be attaching the contract documents, an APC Committee certification of funds (or a donor guarantee letter) to the Request and details of the proposed supplier and State Solicitor Legal Clearance.

After Certificate of Inexpediency has been granted

The Certificate of Inexpediency modifies the method of procurement and doesn't negate the agency from proper execution, financial tracking and contract performance management.



All contracts under the Certificate of Inexpediency are executive by the appropriate delegated authority, either the NPC Board, or Head of State, as recommended by the NPC Board to the National Executive Council.

Contract Execution

The NPC Board will review the details of the Request for Certificate of Inexpediency together with the Contract Documents, State Solicitor's clearance (if required) and APC or donor guarantee letter. If the Board accepts that the contract is in accordance with the terms of the Certificate of Inexpediency, the Chairman of the Board will then execute the contract.

Contract Implementation

Regardless of the nature of the procurement, it is the responsibility of the Departmental Head to ensure that management systems and controls are in place to ensure a high standard of contract management is applied. Such arrangements should be able to withstand independent scrutiny. The agency should comply with any instructions and guidelines in place by the NPC for contract management.

Document Details

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| Document title | Certificate of Inexpediency Guidelines |
| Contact details | info@npc.gov.pg |
| Approved by | APC Committee |
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Change History

| Version | Date | Author | Change details |
|---------|-------------|-------------------------------------|-----------------|
| 0.1 | 19 May 2019 | APCC Secretariat – EU Key Expert | Initial version |
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Acronyms

| Acronym | Full Text |
|---------|--|
| Agency | Any public or statutory body within scope of the NPA |
| APC | Authority to Pre-commit |
| APCC | Authority to Pre-commit Committee |
| COI | Certificate of Inexpediency |
| DoF | Department of Finance |
| DoT | Department of Treasury |
| GoPNG | Government of Papua New Guinea |
| ILPOC | Integrated Local Purchase Order (capturing IFMS PO) |
| NEC | National Executive Council |
| NPA | National Procurement Act 2018 |
| NPC | National Procurement Commission |
| PFMA | Public Finances (Management) Act |
| PIP | Public Investment Program |
| PNG | Papua New Guinea |