

National Procurement Commission

Procurement Committee Operations Manual



About this Guideline

The National Procurement Commission Procurement Committee Operations Manual has been produced with the support of the European Union under the Technical Cooperation Facility funded by the 11th EDF.

Authority and Enforcement

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

Disclaimer

This Manual supports procurement committees that have been delegated powers by the National Procurement Commission Board to operate as a procurement committee on their behalf.

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 npcboard@npc.gov.pg by Friday, 8 November 2019 for inclusion in version 1.0.

Issuing Authority

This Manual has been issued for consultation by the National Procurement Commission Board.

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Introduction

As a procurement committee, members have taken on a responsibility for monitoring and verifying that the procurement on behalf of the State was in accordance with approved procurement procedures. It has the power to execute contracts in the name of the National Procurement Commission Board once cleared by the State Solicitor.

The procurement committee is a sub-committee of the National Procurement Commission Board. It is not an independent board or authority acting in its own interests. In ALL circumstances, the committee must operate within the rules and requirements of the National Procurement Commission Board.

Purpose of the Manual

This manual has been developed to detail procedures that assist the procurement committees undertake their role as contracting authorities of procurement on behalf of the Government of Papua New Guinea (GoPNG).

Definitions

Acquisition Plans	Plans prepared for works, goods and services above K1 million to achieve Value for Money.
Agency	<p>Public and statutory bodies that are required to comply with the National Procurement Act are defined in the PFMA as:</p> <p>“public body” means -</p> <ul style="list-style-type: none"> a. an agency which is part of the State Services established under Part VII of the Constitution; and b. a Provincial Government or Local-level Government established under the Organic Law on Provincial Governments and Local-level Government; <p>“statutory body” means –</p> <ul style="list-style-type: none"> a. a body, authority or instrumentality (corporate or unincorporated) established under an Act of the Parliament or howsoever otherwise for governmental or official purposes; or b. a body, authority or instrumentality (corporate or unincorporated) established by a Provincial Government or Local-level Government; or c. a subsidiary statutory body that is not a public body

Authority to Pre-commit (APC)	Authority issued by APC Committee for expenditure above K500,000. (Procurement cannot proceed unless an APC has been approved)
APC Committee Certification	Authority issued by APC Committee for procurement above K500,000 scheduled on the Consolidated Procurement Plan. (Procurement cannot proceed unless an APC has been approved)
Award	Approval by either the NEC or Board of a procurement committee to issue a contract to the preferred tenderer.
Certificate of Inexpediency (Col)	As defined in the National Procurement Act Section 69. A Col is an expedient and quick procurement process for declared emergencies of the NEC.
Competition	Competition that is effective will see a number of independent companies tendering to provide goods and services to the GoPNG, through the public tendering process.
Complaint	A complaint is when a party in the procurement process expresses written dissatisfaction with an aspect of the procurement process as applied by a procurement committee.
Conflict of Interest	A conflict of interest arises where the private interest of a public officer or committee or NPC Board Member, involved in procurement conflicts or has the potential to conflict with the duties of the person involved in GoPNG Procurement.
Conforming Tender	Tender which meets the qualification requirements.
Consolidated Procurement Plan	Is the consolidated procurement plan of all approved procurement plans submitted by agencies to the APC Committee. No procurement can commence with a certification by the APC Committee that it can commence from the consolidated procurement plan.
Consulting Services	Professional services of an intellectual and advisory nature provided by consultants using their skills to study, design, and organize specific projects, advise clients, conduct training and transfer knowledge.

Corruption	Defined as offering, giving, receiving or soliciting (asking) either directly or indirectly, for any thing of value to influence the action of a public official involved in GoPNG procurement.
Delegation	Limits established by the Minister of Finance for all Agencies, the NPC Board and procurement committees.
Execution	Legal agreement between a Contractor and GoPNG Executing Authority (either the Governor General or Chairperson of the NPC Board or procurement committee)
Fraud	Misrepresentation or omission of facts in order to influence a procurement process or execution of a contract.
Lowest Total Cost	Lowest cost for works goods and services, calculated in accordance with the Bidding Documents, and must include initial capital cost or cost of services and possibly other overheads such as whole of life costs (if provided for the Bidding Documents).
Major Contract	A “major” contract is defined as one that exceeds the prescribed amount as defined in Section 26 of the National Procurement Act – currently K500,000
National Preference Allowance	A margin of preference under Section 47 that is provided to National companies and citizens during the bid evaluation process
National Tenderer	Section 2 of the National Procurement Act defines a citizen and a National company. Either is considered a National Tenderer or Bidder under the Act.
Negotiations	Negotiation is defined as discussions between Contractor and the procurement committee, NPC Board or APC Committee to meet defined project needs and budget requirements. Refer to the specific section in the Manual on when this is permitted.
Policies	Directives issued by the NPC Board to control and regulate procurement consistent with the National Procurement Act and procurement instructions.
Procurement committee	A delegated sub-committee under the National

	Procurement Commission Board and is represented by Provincial Committee's of the NPC Board, District Committee's of the NPC Board or Special Committee of the NPC Board.
Procurement plans	Post National Budget Procurement Plans as defined in Section 25 of the National Procurement Act
Procurement	Procurement is defined by the National Procurement Act as the acquisition or disposal by purchase, rental, lease, hire, purchase, licence, tenancy, franchise, or any other contractual means of any type of goods works or services or any combination of them.
Procurement Thresholds	Thresholds as outlined in Section 26 of the National Procurement Act
Qualification Requirements	Minimum qualifying requirements, stated in the Bidding Documents including corporate experience, staff experience, equipment and financial resources.
Services (non-professional services)	Services such as cleaning, security, photocopying and travel.
Standard Bidding Documents	Standard templates of bidding documents (including standard conditions of contracts) approved by NPC.
Tender Validity	Validity period of each tender as specified in the Bidding Documents.
Termination	If there has been a significant breach of contract or one or both parties cannot fulfil their obligation, it may be necessary to terminate a contract before it reaches its natural conclusion.
Transparency	Transparency in procurement is the clear and public documentation of procurement processes, tender requirements, selection criteria, and decisions which are be able to withstand independent review and scrutiny.
Value for Money	Defined as obtaining works, goods and services for the GoPNG that best meet the government's need at the lowest total cost.

Variations	Variations are deemed to be any change of price, scope and time within the original contract.
Whole of Government (WoG) Contracts (Framework contracts)	Contracts that can be accessed and utilised by any agency under the terms and conditions of the contract

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Role of a procurement committee

A procurement committee operates for the NPC Board. It is the independent review of procurement recommendations, assurer of funds availability and has the power to award and execute contracts (cleared by State Solicitor) on behalf of the State. The procurement committee:

1. Confirms that the proposed procurement is in accordance with National Procurement Commission approved procurement procedures and instructions and the National Procurement Act;
2. Confirms the ranking and recommended supplier is capable to meet the requirements of the contract and eligible to supply to the Government of PNG as a registered and accredited supplier with the NPC;
3. Ensures that the procurement process upheld the Code of Ethics and the additional principles of the National Procurement Act for a non-discriminatory, transparent, fair, competitive, confidential and assures the State is afforded best value for money;
4. Examines the risks to the State when awarding the contract such as financial liability and legal implications;
5. Confirms that the Technical and Financial Evaluation Committee evaluation process was conducted in accordance with National Procurement Commission procedures, and other applicable instructions;
6. Confirms that appropriate funds are available to cover a contract including an Authority to Pre-Commit;
7. Ensures that all actions are in the best interests of National Procurement Commission and the Government of PNG.
8. Prior to execution, ensures that the contract has been cleared by the State Solicitor. The committee does not review or provide advice on contracts but shall ensure that it has been cleared.
9. Publishes procurement awards including variations to TFEC recommendations and the reasons of the decision.
10. Ensures that all procurement has been published on the Government of PNG's procurement website and has been managed in its entirety by the National Procurement Commission.

How a procurement committee is established

Only the NPC Board has the authority to delegate its Board procurement function under the National Procurement Act. Where a need to establish a procurement committee has been

identified, the agency would formally request the National Procurement Commission to delegate its powers to establish the committee.

The National Procurement Commission Board needs to be satisfied that there is a genuine need to delegate its powers and that there is sufficient procurement capability and independence to operate those powers.



Power to Delegate

Pursuant to Section 77(3) of the National Procurement Act, the NPC Board may delegate, on such terms and conditions as it thinks fit, its procurement function at a provincial, local and district level:

- a) at a provincial level, a Provincial Committee of the Commission; or
- b) at a district level, a District Committee of the Commission; or
- c) at a local-level, a Local-Level Committee of the Commission

The Board is under no obligation to establish a procurement committee and will firstly consider if there is an established need and capacity to operate a committee

Under Procurement Instruction 05/2019 the NPC Board has not delegated the ability to delegate its powers to a Local-level Committee of the Commission

Technical and Functional capability

The NPC is not able to delegate its functions unless the Provincial Government or the relevant District Development Authority has been certified under the NPA that it -

- i. has the capacity to engage in the procurement processes; and
- ii. it is sufficient to protect the use of public funds and ensure that good public financial management practices are followed and applied by Provincial Government or District Development Authority.

Identify the need to establish a procurement committee

A Provincial Government or District Development Authority would firstly consider if a procurement committee is necessary. Areas to consider are:

1. What is the level of procurement that is being undertaken within the scope of the committee? If there is minimal (less than five) procurements >K500,000 per annum, is a committee required? The delegated committee is only able to execute contracts above the K500,000 threshold. Those below this threshold are executed by the agency undertaking the procurement.
2. Is the proposed members of the procurement able to identify that procurement activities are conducted in line with approved procurement practices of the National Procurement Commission? Assess the collective functional and technical capacity of those members proposed for the committee.
3. Can the procurement committee operate independently to ensure that the result is fully compliant with process, sufficient funding exists and the risks have been assessed and mitigated.

Composition and award thresholds

The National Procurement Act and Procurement Instruction 05/2019 outlines the composition and upper thresholds for delegated procurement committees.

Provincial Committees of the NPC

All Provincial Committees of the NPC have the jurisdiction to undertake procurements of –

- (a) not exceeding K 5,000,000 for the Province in which they are located, or
- (b) not exceeding K 5,000,000 for and on behalf of District Development Authorities within each Province.

The Chairman of a Provincial Committee of the NPC shall execute all contracts awarded by the Provincial Committee of the NPC –

- (a) in the case of a procurement awarded by the Provincial Committee of the NPC on behalf of a Province, in the name of the Province; and
- (b) in the case of a procurement awarded by the Provincial Committee of the NPC on behalf of a District Development Authority, in the name of the District Development Authority.

The membership of a Provincial Committee of the NPC is specified in Section 77(5) of the NPA. The Finance Minister has the power to appoint an independent person who has an unimpeachable and impeccable reputation and relevant experience or demonstrated understanding of commercial, procurement or contracting practices to be a member of a Provincial Committee of the NPC.

District Committees of the NPC

All District Committees of the NPC have the jurisdiction to undertake procurements of not exceeding K 2,500,000 for the District Development Authority of the District in which they are located.

The Chairman of a District Committee of the NPC shall execute all contracts awarded by the District Committee of the NPC in the name of the District Development Authority.

The membership of a District Committee of the NPC is specified in Section 77(6) of the NPA. The person appointed to represent the interests of justice, law and order in the District; and the person appointed to represent the interests of the community in the District; and the person appointed to represent the interests of women in the District shall be selected by the Finance Minister.

Special Committees of the NPC

The establishment of special procurement committees to support a specific agency or sector is only provided in exceptional circumstances. All Special Committees of the NPC have the jurisdiction to undertake procurements of not exceeding K 1,000,000 for the specified scope of tendering in the entity for which they are located.

The Chairman of a Special Committee of the NPC shall execute all contracts awarded by the Special Committee of the NPC within scope of the committee's procurement function.

The membership of a Special Committee will be determined by the NPC and will include a member of the NPC procurement operations and chaired by the Head of the agency/Chief Executive Officer.

Application to establish a procurement committee

A formal request from the Chairman of the proposed procurement committee must be made to the National Procurement Commission Board. This request will have a number of elements and must contain information on:

1. The anticipated annual volume of procurement activity that will be undertaken by the committee;
2. The nature of the procurements including the category and procurement risks;
3. Any prior public procurement experience by the proposed members of the procurement committee;
4. Confirmation that the procurement committee is able to fund the travel and associated costs of the NPC to deliver an induction and any training to the procurement committee on its commencement;
5. Confirmation that the procurement committee has the funding and resources to also support a secretariat function who will liaise with the NPC on matters such as procurement

- registration, reporting, compliance checks, records management, notifications and other matters;
6. Recommendations for the independent person of the procurement committee
 7. Nominations for non ex-officio committee members

Nomination of an Independent Person

The procurement committee is to ensure there is an independent member appointed by the Finance Minister. This person must have an unimpeachable and impeccable reputation and relevant experience or demonstrated understanding of commercial, procurement or contracting practices.

The procurement committee Chairman will consult with committee members is to identify three persons suitable as an independent person. As part of the written request, the committee is to provide reasons for the nominations and a copy of their curriculum vitae and references.

The NPC Board will consider this nomination when establishing the procurement committee and will make a recommendation to the Finance Minister. The Finance Minister is not bound by any recommendation so made.

Nomination of non ex-officio members

As with the independent person, non ex-officio members representing specific interests will need to be nominated. As part of the written request, the committee is to provide reasons for the nominations and a copy of their curriculum vitae and references. If there are other possible candidates for the position, the committee will also provide these details and their preferred candidate. A committee can only have the number of persons appointed as specified in the Act.

Assessment by the NPC Board and certification

The NPC will firstly consider and assess the request and identify if a need has been established. Once established, the NPC is then required under Section 77(4) to confirm that the committee:

- (a) Has the capacity to engage in the procurement processes; and
- (b) It is sufficient to protect the use of public funds and ensure that good public financial management practices are followed and applied by Provincial or District Development Authority.

Capacity Assessment

The public financial management practices of the Provincial or District Development Authority will be reviewed to assess capacity. This will be undertaken by considering a number of areas including the experience of proposed committee members in public financial management, as well as other areas such as:

1. Auditor General audit findings of the Government or Authority;

2. Compliance of the Government or Authority to the PFMA and instructions including the acquittal of public funds;
3. The committee's access to adequate facilities to undertake committee functions including the provision of secretariat support and internet to communication with the NPC on areas such as records, reporting and advertising of procurement on the procurement website;
4. Has the committee members undertaken or scheduled to undertake procurement training with the NPC;
5. Does the committee members understand the safeguarding of independence and have established mechanisms to require the declaration of conflict of interests

Annual assessment of procurement committees

Maintaining governance oversight of procurement committees is time consuming and to ensure only capable procurement committees continue to operate, the NPC will undertake an annual capacity and needs assessment of operating committees. In addition to the factors above, the NPC will also consider :

1. During the year, was audit findings released or administrative review investigations conducted on procurement processes by the Government or Authority and the procurement committee
2. Does sampling undertaken on procurement awarded by the committee demonstrate compliance is being enforced for procurement
3. Are there adequate record management practices and has the necessary records required of the NPC including committee minutes and tender documentation
4. Has the procurement committee been integrating procurement within the processes of the NPC and complying with NPC procedures
5. Has the committee introduced processes to ensure probity and established mechanisms to combat and prevent fraud

Committee Induction Pack

Once NPC training has been completed for the procurement committee, a committee induction pack will be provided that contains the necessary templates and equipment that is necessary to commence as a procurement committee, including but not limited to:

1. Copies of all relevant legislation, instructions and guidelines that have been issued by the NPC at that point in time.
2. Templates to undertake procurement committee activities including meeting minutes, procurement registration register, bidding document and TFEC checklist, letterhead, conflict of interest form etc.

3. The seal stamp used to execute contracts
4. Any other publications or information necessary to conduct the activities of a procurement committee

Roles and Responsibilities

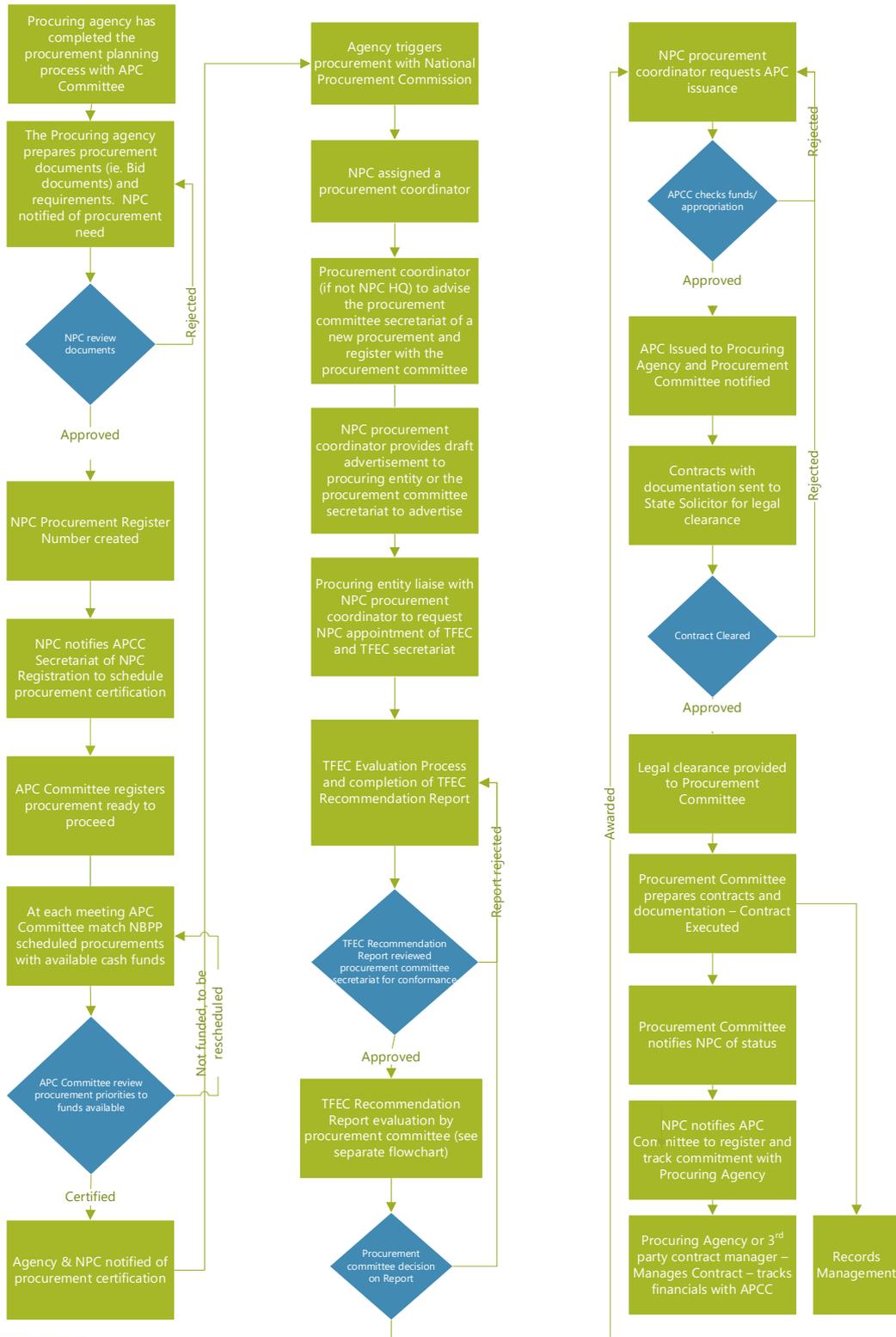
Role	G-G	NEC	NPC*	NPC Board	Procurement Committee	Procuring Agency
Establish need for Works, Goods and Services						✓
Obtain APCC Certification to procure from the Consolidated Procurement Plan						✓
Develop Bidding Documents and Specification			✓			✓
Developing Selection Criteria			✓			✓
Advertise						✓
Issuing Bidding Documents			✓			
Open Tenders			✓			
Appoint TFEC			✓			
Evaluate Tenders - TFEC			✓			✓
Table TFEC and Tender outcome			TBA**			
Obtain APC			✓			
Consider Recommendation and Award		✓		✓	✓	
Legal Clearance				✓	✓	
Execute Contract	✓			✓	✓	
Implement Contract (or third party contract manager)						✓
Post Implementation Review			✓	✓	✓	✓

*the Department of Finance officers in Provinces and Districts have been assigned some procurements functions as part of the NPC.

**The NPC has not advised on the approach to appoint and provide secretariat support for TFEC. This manual will be updated when this is provided.

Overview of the Procurement Process

The details of the procurement methods, processes and procedures are detailed in guidelines issued for that purpose by the National Procurement Commission. The National Procurement Commission is the only authority to undertake procurement and will delegate powers as necessary to Department of Finance officers located in Provinces and Districts.



Secretariat and meetings of the procurement committee

Members of the procurement committee are not paid any allowances to attend meetings.

Before the Meeting

Meeting Schedule

Meetings are to be scheduled on an as-required basis. The committee are to keep a schedule of each meeting that was held and minutes of that meeting. These are forwarded to the NPC on a monthly basis to be integrated into the NPC Board's committee decision register.

Prepare reports for a meeting

The committee secretariat is to keep a register of all active procurement that have scheduled for consideration of the committee. This register is to be tabled at each meeting of the committee to track the progress of procurements. This register may be replaced by a consolidated electronic register, this will be available to all committees and their secretariat either electronically or when requested.

In addition to a register showing procurement progress, the committee secretariat will also ensure that any TFEC recommendation reports tabled for consideration by the committee contain all the necessary documents. All contract variation requests or other procurement matters such as disposals are also tabled with the necessary documentation to enable the committee to make considered decisions.

Prepare an agenda

Agenda to be prepared by the committee secretariat and sent to all committee members regardless of whether they are able to attend the meeting. A format for the agenda is supplied as part of the committee induction pack.

Determine who will attend

The committee secretariat is to invite all committee members to a meeting and distribute the agenda.

Running of Meeting

Opening the meeting

The meeting begins after the Chairperson declares the meeting opened.

The meeting is unable to begin until the Chairperson declares a quorum. The quorum of the meeting is at least three members, of which at least one shall be an ex-officio member. This means that there are enough people in attendance to allow debates to be conducted and decisions to be voted upon. If a quorum cannot be declared within 45 minutes of the meetings designated starting time, the meeting should be called again for a similar time and place a week later.

If a Chairperson is not able to chair the meeting, the Board should elect another Chairperson from among the members present to act temporarily.

Under the National Procurement Act, the Chairperson is the Provincial Administrator. In the event that there is no Provincial Administrator, other than temporarily indisposed, the procurement scheduled to be considered by the committee must be tabled directly to the National Procurement Commission Board.

Apologies

The Chairperson states the names of those members who formally notified that they were unable to attend the meeting.

Declarations

Any member, who believes they have a conflict of interest in relation to any item on the agenda, must declare that conflict at the beginning of the meeting. In the event that the member is unsure of a conflict of interest then the members must vote on the perceived conflict of interest and the outcome noted in the minutes.

Any member with a conflict of interest shall not contribute in any way to that agenda item and must leave the meeting during its deliberation.

Compulsory reading time

The Chairperson must ensure that there is sufficient time allowed for members to read papers of the meeting. It is within the rights of any member to request the deferral of any item on the agenda to allow for more time to read papers.

Minutes of the Previous Meeting

The Chairperson tables the minutes of the previous meeting making them open as a topic of discussion. At this point the Chairperson will ask the members to adopt the minutes. If the members do not agree that the draft minutes are accurate, changes may be suggested. The Chairperson should ask the meeting to vote on those corrections. If there are only a few minor corrections, the Chairperson may ask the members to accept the minutes with the corrections. The vote to adopt the minutes can then go ahead on that basis.

Once the Minutes have been adopted the Chairperson should sign the minutes, together with the committee secretariat. These minutes are to be scanned and filed correctly. All meeting minutes are also sent to the National Procurement Commission on a monthly basis.

Business arising from minutes of the previous meeting

Often the issues for Business arising from the Minutes of the Previous Meeting are listed in the agenda. Any reports, pieces of information or other matters of substance that were requested at the previous meeting are debated and a vote is taken on the appropriate action to take.

Meeting Procedure

Voting

Items of business are announced singly by the Chairperson during the meeting and a discussion or debate follows each one. Motions may be put forward to the committee by any member for consideration. The motion must be acknowledged by the Chairperson. The motion is then

discussed. Sometimes amendments to a motion are put forward. Only after the amendments are debated and voted upon can the revised substantive motion be brought to the vote. Once the motions receive a simple majority, or a majority as defined, they become resolutions.

In the event of an equality of votes, the Chairman will also have a casting vote.

The motions must be definitive and clearly stated in the Minutes of Meeting. The minutes of meeting must also clearly indicate the outcome of the motion. For votes relating to TFEC Recommendation Reports, all members must indicate their approval or rejection or deferral or abstinence of the motion.

Correspondence

Any correspondence (such as letters, emails and the like) received by the procurement committee are discussed. The Chairperson should summarise correspondence which cover similar issues, or express similar opinions and discuss them as a single issue. The Chairperson presents a piece of correspondence to the meeting to be discussed and acted upon, if necessary.

Management of complaints

Any correspondence received by the procurement committee, Government or Authority that is considered a complaint in relation to a procurement must be immediately referred to the APC Committee as part of their administrative review responsibilities.

Awarding contracts and TFEC Recommendation Reports

More details on awarding contracts is provided in a further section of this manual. TFEC Recommendation Reports and a completed Recommendation Report Checklist (provided as part of the committee induction pack) plus any supporting information are tabled and discussed.

The TFEC Recommendation Report is received and a discussion or debate may now take place on the contents, interpretation and recommendations of the report.

The following motions are to be made by members:

1. Acceptance of the recommendation
2. Deferral of the recommendation, pending clarifications (consider further issues or reconsider issues on the basis of particular information) from the TEC
3. Rejection of the recommendation
4. Member(s) may choose to abstain from the voting on the motion.

If possible and on the committee's request, the members of the TFEC should be available when the committee is meeting to discuss any request for clarification of the Recommendation Report.

Reviewing progress of procurement

The procurement committee is also responsible for overseeing the progress of any procurement within the scope of their committee. Where necessary, the committee can request information on

procurement that is not progressing. In these instances, the committee can request the National Procurement Commission to step in and review the procurement progress.

Any other Business

It is at this point in time, that the members are able to raise issues they feel are important. These include any items which were not listed on the agenda. No extremely important or complex issues should be raised unannounced during this part of the meeting. If the Chairperson feels that any of the issues brought up for discussion are too complex or require further information, he or she may call for another meeting to discuss the issue or alternatively, put it on the agenda for the next scheduled meeting.

Close of Meeting

Once all the issues have been put forward and discussed, the Chairperson advises members of the date and time of the next meeting. The meeting is now officially closed.

After the Board Meeting

The committee secretariat must provide to all members with copies of the Minutes of Meeting (with any attachments) within 48 hours. The outcomes of the TFEC Recommendation Reports deliberations are conveyed to the TFEC and NPC within 24hrs.

The committee secretariat will be required on a monthly basis to provide the following information:

1. A copy of the committee decision register
2. A copy of the procurement register updated with current progress
3. Copy of all committee minutes (both signed and in draft) of the month
4. Any changes to the members of the procurement committee
5. Any changes to the contact information of the procurement committee and secretariat

The NPC may request other regular information and will advise the committee. The committee is required to respond to any information request of the NPC.

Committee responsibilities to award contracts

Once the TFEC has evaluated the tenders, the TFEC Recommendation Report is submitted to the procurement committee for review and consideration (via the Secretariat). The committee is to ensure that procurement processes are conducted in accordance with the National Procurement Act, particularly its principles, and in line with NPC procedures. Awarded contracts must represent Value for Money.

Responsibilities

The committee is responsible for ensuring that all procurement complies with the National Procurement Act, any instructions, guidelines and manuals issued by the NPC on the process of procurement. The committee awarding and executing contracts on behalf of the NPC Board.

Achieving Value for Money is critical. It is a measure of economy and efficiency with which the financial resources of the Government are converted to public services or works.

Therefore, Value for Money represents the optimum combination of life-cycle costs and benefits of the procurement. The State shall, as far as practicable, ensure the attainment of Value for Money.

The committee secretariat plays a key role in reviewing TFEC recommendations before being tabled at the procurement committee. This is to ensure that:

1. All the relevant documentation is presented to the Board, and
2. Obvious breaches of the National Procurement Act and issued instructions are identified.
3. All pre-contractual requirements have been met by the tenderers (eg security guarantee and registrations etc)

Key Timings

TFECs are to submit the evaluation report to the procurement committee within 20 working days of receiving the Tenders. The committee secretariat is to complete a review of the Recommendation Report within 3 working day of having received the report from the TFEC. The procurement committee is to consider the procurement within 15 working days of having received a completed TFEC Recommendation Report.

If the procurement committee requires the TFEC to provide clarifications, the TFEC is to respond within 5 working days.

If the procurement committee makes a decision to award the contract, the secretariat must provide this to the State Solicitor to review the draft Conformed Contract, within 10 working days.

Written notification of acceptance/rejection by the procurement committee is to be provided to the Agency within 3 working days of the committee meeting.

Minimum areas of consideration of contract award

The procurement committee is to ensure that it has the necessary information to make an informed decision prior to contract award. This includes:

1. A schedule of Tenderers for the procurement
2. Accessing the advice of persons with specialised knowledge (eg the TFEC)
3. Consider the tender with reference to the bidding documents including conditions of Tendering and Specification
4. Information necessary to consider the tenderers:
 - a. Capacity

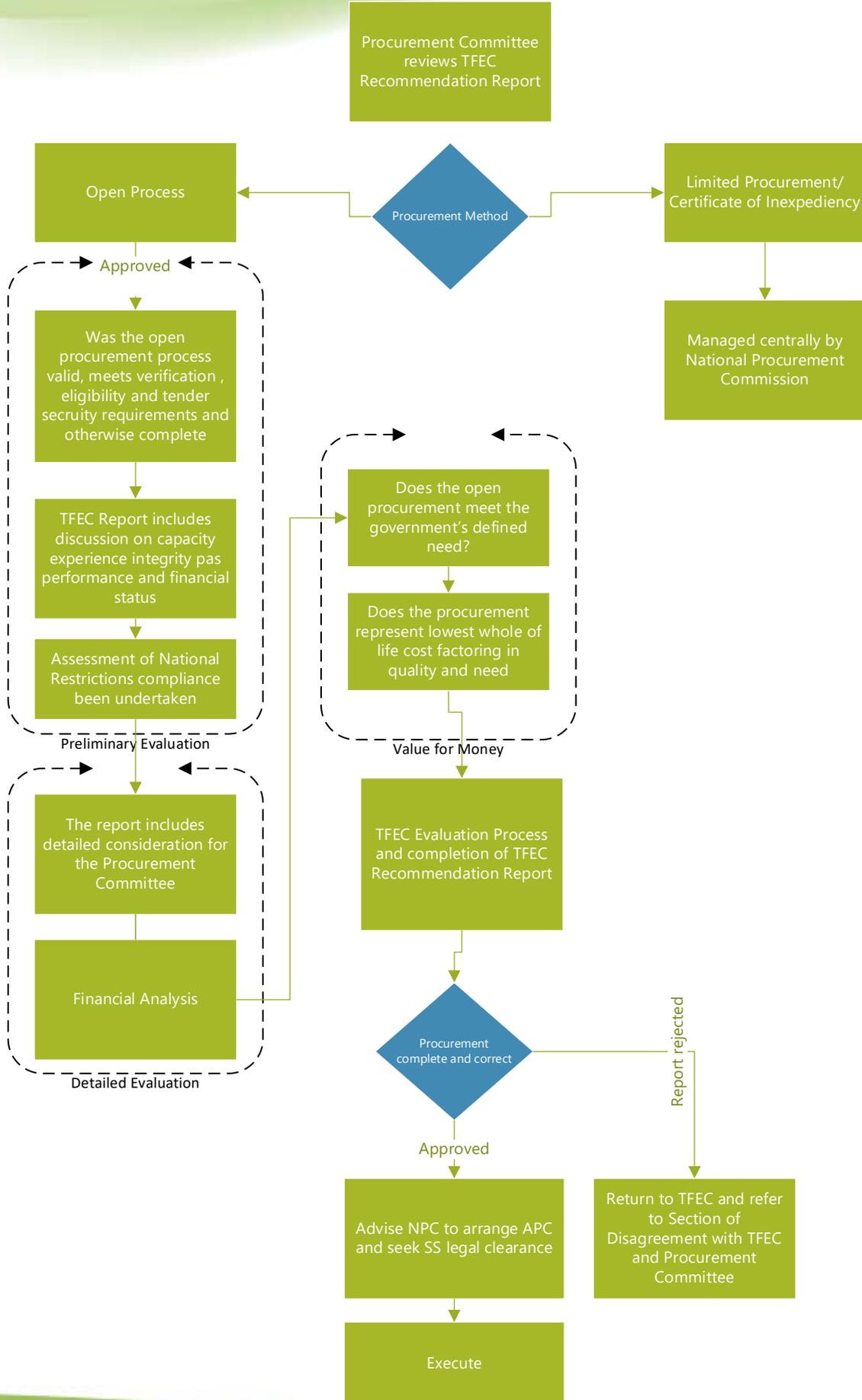
- b. Experience
 - c. Integrity
 - d. Past performance, and
 - e. Financial status
5. Committee secretariat review of TFEC Recommendation Report to ensure that it:
- a. Provides for a contract to be established with a value greater than K500,000
 - b. Is signed by all members of the TEC
 - c. Accurately describes the works, goods and services to be supplied
 - d. Contains Tender Opening Checklist(s), Tender Opening Register and Tender Opening Record Sheet identifying each tenderer and price
 - e. Identifies the names and titles of technical experts in TFEC employed by the Agency to evaluate the tenders
 - f. Conditions of Tendering and Specification
 - g. Draft Conformed Contract Agreement
6. Finances are available. An APC has been issued and initial certification to commence procurement by the APC Committee has been provided.

Action following Board Award

Once the Board has awarded, the committee secretariat must seek a Certificate of Legal Clearance from the State Solicitor's Office. Once received, the Secretary must arrange for the contract to be executed by Chairperson using the seal provided by the National Procurement Commission Board.

Where the procurement committee has commenced a procurement but the contract value is above the committee's delegated authority, the committee secretariat must prepare for the procurement committee to formally submit the TFEC Recommendation Report and all other documentation necessary to the NPC Board, or in the case of a District procurement committee, the Provincial procurement committee if within their delegation. The delegated committee will deliberate on the TFEC Recommendation Report and is not bound by any recommendations or decisions that were made by the initial procurement committee.

Overview of Board Evaluation process



Confirmation of Value for Money

The procurement committee is required to confirm that the recommended tenderer will provide the GoPNG with works, goods and services that represent Value for Money. The procurement committee should expect that the criteria for identifying Value for Money was considered as part of the TFEC evaluation process.

When considering works contracts, the Engineer's Estimate may be used as a guide as to the reasonableness of tendered prices. For other goods and services, the initial budget estimate of the procurement should be a guide. Where significant differences exist between the estimate and the tendered prices, the procurement committee should ensure that the TFEC recommendation report explains such differences.

Value for money is not a choice of goods or services which is based on the lowest bid price but a choice based on the whole life costs of the project or service.

The procurement committee is not obliged to accept the recommendation of the TFEC. However, in carrying out its role the committee should ask inquiring questions of Agencies, and/or TFECs where information presented is deficient. Recommendations must not be approved until the procurement committee is confident that the compliance with National Procurement Act and its principles have been met.

Disagreement between committee and TFEC

When the procurement committee disagrees with the TFEC's recommendations, in the first instance the committee is to discuss the matter with the TFEC. If possible, the TFEC should be available during the committee meeting to provide explanation of decisions and recommendations in the Recommendation Report. The committee should avoid deferring a decision, unless a satisfactory explanation is not received.

The TFEC may be required to consider additional information provided by the procurement committee. If deemed appropriate the TFEC is to prepare a revised Recommendation Report.

In the event that the committee disagrees with the initial and subsequent Recommendation Reports, it is to refer this matter to the National Procurement Commission. The National Procurement Commission will undertake a review the TFEC's recommendation report(s) make recommendations to either accept or reject the TFEC Recommendation Report.

The independence of the TFEC is prescribed in Section 35 of the National Procurement Act and no person, including the procurement committee or its secretariat, shall directly or indirectly by any means seek to influence or direct in any way a TFEC or its members, in the independent performance and discharge of its functions.

Negotiations

Under section 62 of the National Procurement Act, negotiations shall not be carried out in respect of a bid, except where:

- (a) a competitive procurement methods was used and only one bid was received in response to the call for bids;
- (b) a procurement method was used that resulted in only one bid (such as limited procurement)

Negotiations shall be only carried out where the best evaluated bid or proposal exceeds the budget of the procurement as initially certified by the APC Committee as part of the Procurement Plan. If the cost of the procurement exceeds the budget estimate, the procurement committee can cancel the procurement process and request that it recommences; or negotiate with the bidder in order to obtain a reduction of the scope of the quantities of the procurement. This should be conducted in consultation with the National Procurement Commission and/or the buying agency.

The procurement committee can also request the APC Committee to investigate and undertake negotiations.

International Agreements and Organisations

The National Procurement Act

Assigning third party contract management services

As part of the contract award decision, the procurement committee is also to consider if the contract management can be undertaken by the agency or if it is to be assigned to a third party contract manager (Section 73 of the National Procurement Act). This assessment would have been initially undertaken by the buying agency when developing their Procurement Plan and their budget estimate for the procurement. If this had been initially identified, it will need to be confirmed as part of the contract award decision by the procurement committee. At the time of the award, the procurement committee will refer to the National Procurement Commission the requirement to assign a third party contract manager.

It should also form part of the TFEC Recommendation Report to the procurement committee. At the time of preparing this manual, a standing panel of third party contract managers has not been established. It is proposed that a panel will be established and maintained by the APC Committee.

Form of Contract – role of State Solicitor

The State Solicitor controls all matters related to the form and nature of contracts for procurements. Under Section 70 of the National Procurement Act, awarded contracts must be in a form approved for use by the State Solicitor. The form of the contract to be used in any procurement shall be at the sole discretion of the State Solicitor in order that the best interests of the State are fully protected.

Under no circumstances can a procurement committee execute a contract that has not been approved and cleared by the State Solicitor.

Limited Procurements and Certificate of Inexpediency

The procurement committee has no powers to award contracts that were procured using limited procurement methods or with a Certificate of Inexpediency. These powers remain with the National Procurement Commission and its Board.

A limited procurement is a procurement method where the agency limits procurement to a supplier or suppliers of its choice. A procuring entity may use limited procurement in very specific circumstances and includes limited tendering and sole or single source supplier processes. Limited procurement cannot be used for the purpose of avoiding competition or to discriminate suppliers. Limited procurement cannot be used for reasons of urgency where the procuring entity failed to plan to obtain goods and services through open bidding.

Where an agency has approached the procurement committee to undertake a limited procurement or to obtain a Certificate of Inexpediency, the committee must refer them to the NPC. There are specific steps that are required to complete this request and outlined in other instructions issued by the NPC.

Applying Fees

At the time of publication of this draft manual, direction has not been provided by the Acting CEO of NPC on the application, collection and disbursement of fees. This will be updated when provided.

Ensuring Transparency

The procurement committee has an obligation to ensure the principles of the National Procurement Act are upheld, including transparency. It is an responsibility of the procurement committee to ensure that prior to contract execution, all necessary notifications of the procurement made to enable the most competitive process in bidding and to ensure tenderers who felt aggrieved by a procurement decision of the procurement committee, have had an opportunity to request an administrative review by the APC Committee before execution of the contract.

Transparency in public procurement means that information on the public procurement process must be available to everyone: contractors, suppliers, service providers and the public at large, unless there are valid and legal reasons to keep certain information confidential.

All procurement notifications must contain sufficient details for persons to make an informed decision on whether to bid. The National Procurement Commission will provide the procuring agency and committee secretariat with minimum advertisement requirements.

Details on minimum information requirements both during procurement and as part of awarding and execution of contracts will be issued by the National Procurement Commission.

Code of Ethics

At the time of this manual, the NPC Board had issued a draft Code of Ethics. The procurement committee and its secretariat are required to uphold a Code of Ethics once issued by the Board and ensure that all persons that are part of the procurement process (for example the buying agency, bidders and TFEC members) are aware of their responsibilities.

Ensuring Independence

Ensuring independence is a mandatory requirement of the Procurement Committee and identify ways to safeguard this independence. This includes Conflicts of Interest. It shall be the duty of a member of a committee who is in any way, whether directly or indirectly, interested in any deliberations of that committee regarding the bidding process, to declare the nature of his interest at a meeting of the committee.

“Conflict of Interest” Defined

A conflict of interest arises where the private interest of a member, a member of the secretariat or support staff, a member of the TFEC or any other person involved in the procurement process has a private/personal versus functional role conflicts, or might reasonably be thought to conflict, or has the potential to conflict, with the duties of this person in the performance of their role.

Responsibility of Procurement Committee Members

A procurement committee member shall make declaration of the conflict of interest at the earliest possible time to full committee and shall not take part in any deliberations or decision by the committee with respect to the contract, and shall vacate the committee room during deliberations in relation to the matter for which the conflict of interest arises.

The declaration should be noted in the formal minutes of the meeting.

Contract Execution

This procedure exists to provide guidance to the Chairperson and committee secretariat in the execution of contracts. The process of contract execution is the legal acceptance by the Government of PNG of the tenderer's offer. No goods, works or services of the tenderer offer can commence without an APC and signed contract in place.

Contract execution cannot be undertaken without a State Solicitor's clearance and an APC issued from the APC Committee. The Chairperson will then execute the contract using the seal of the National Procurement Commission.

The Chairperson is responsible for ensuring that contracts are within the delegated authority of the procurement committee. The Chairperson can only use the executing seal of the NPC Board for contracts within the management of the NPC which are those >K500,000. Contracts below this amount are executed directly by the procuring agency.

The committee secretariat is responsible for ensuring:

- That 3 copies of the contract agreements are presented to the Chairperson for signature on behalf of GoPNG as soon as practical after the State Solicitor clearance and APC has been issued.
- Organising for the selected Contractor to sign 3 copies of the contract agreement as soon as practicable after it has been signed by the Chairman.
- Ensuring that a signed copy of the signed agreement is:
 - Provided to the Agency's representative as identified in the contract
 - Provided to the Contractor
 - Maintained on the procurement committee file.

Key Timings

Contract agreements should be signed within 5 working days of clearance, where the Contractor is based in the home Province. Where documents need to be sent to out of the Province for signing by approved Contractor, signing should be completed within 20 working days.

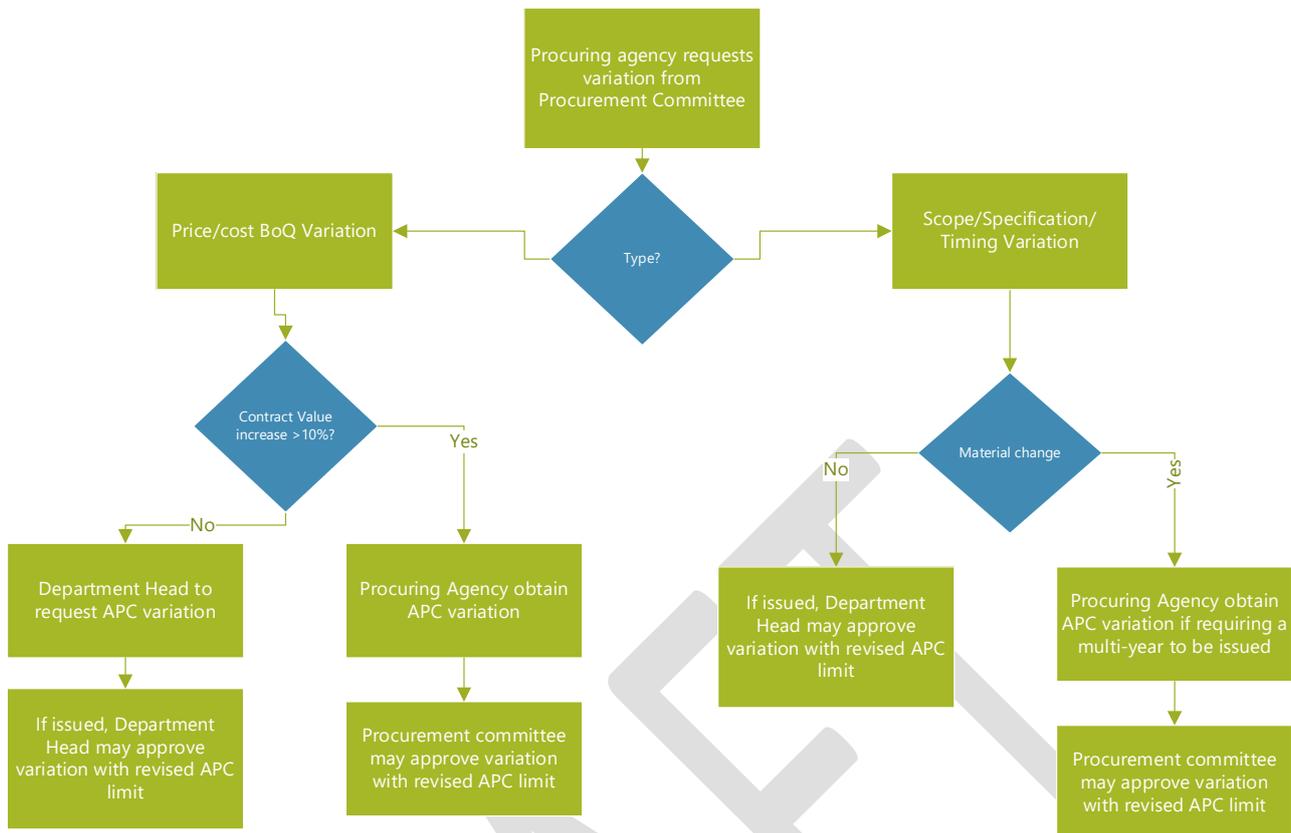
Chairman of the Board is to provide a notice in the next available National Gazette of the name and amount of the successful tenderer

Contract Variations

For the purpose of this Manual, variations are deemed to be any change of price, scope and time within the original contract. It is important to note that all Variations must be handled in accordance with the contract documents. Some contracts will be strictly Lump Sum Contracts with no provision for variation, whilst other conditions of contracts will provide for Variations.

Need to add specific details on how we will handle variations – including the requirement to get a new APC.

The approval of variations is with the original contracting authority. For contracts that were executed by the procurement committee, variations are to be approved by the procurement committee unless the total of the contract – original and variation exceed the committee's delegation. In this instance, the Chairperson must refer the variation to the NPC Board, or in the case of a District procurement committee, to the Province procurement committee if within their delegation.



In all cases, an increase in the financial value of the contract will require a submission to the APC Committee to issue an APC variation. Without substantiation of funds to support the variation, the APC request will be rejected. The procuring agency may also need to get a variation to a multi-year APC where an extension of time has been requested over budget years.

A material change in price and scope is defined as one which substantially affects the scope, quality and performance of the contract which is inconsistent with the original intent.

Termination

If there has been a significant breach of contract or one or both parties cannot fulfil their obligation, it may be necessary to terminate a contract before it reaches its natural conclusion.

The following rules apply in relation to contract terminations:

1. Contracts can only be terminated by the authority that executed the contract
2. If a contract is being terminated for reasons other than specific requirements (such as valid insurances, performance or finance guarantees or compliance with IRC), written legal opinion from the State Solicitor must be sought prior to terminating a contract.
3. The contract authority terminating the contract must immediately advise the APCC Secretariat of the termination to update the APC Commitment database to cancel the remaining APC.

National Content

The National Procurement Act outlines provisions in Section 47 and Section 48 on requirements for National company and citizen preferencing in tender awards, reservations and restrictions. The procurement committee must ensure that these requirements are met and any further instructions issued by the NPC on national content are evident in the procurement process. All public procurement shall ensure that, as far as is reasonably practicable, it seeks to promote and maximise (Section 48(s)) –

- (a) The use of local expertise and materials
- (b) Participation of local communities and organisations
- (c) The application of appropriate, sustainable and cost-effective technologies

Emergency Procurement

The process for procurement during an emergency will be outlined in guidelines issued for this purpose and will not be outlined in this manual as they will change as management of emergencies evolves. The NPC Board is the only delegated authority under the National Procurement Act that can issue Certificates of Inexpediency on NEC declared emergencies.

International Agreements

There may be cases where terms of the international agreement may require procurement to be conducted under the procurement terms of the international organisation or donor country. Where the funds are controlled by or integrated within the appropriations of the National Budget, it is more likely that procurement will need to comply with the NPA. Where there are conflicts with international agreements that apply different procurement approaches, these are identified in the agency's procurement plan. The procurement committee or delegated NPC procurement coordinator should seek specialist advice from NPC to interpret application of the National Procurement Act with international agreements.

Complaints Management – Administrative Review

The committee secretariat is to ensure that the complaints lodgement process is displayed in places where procurement activity is undertaken, such as on the Government noticeboards or on tender boxes.

Under s75 of the National Procurement Act, a person who is aggrieved by a decision of the Board, a delegated procurement committee, or a public or statutory body in respect of a procurement, including the National Procurement Commission, may make a complaint to the APC Committee. All complaints are investigated free of charge.

If it is an active procurement, the person can speak with the procurement committee or secretariat. However, if they wish to make a formal complaint, they may do so with the APC

Committee. The procurement committee has no authority to investigate or undertake complaints management. All complaints must be referred to in writing to the APC Committee and its Secretariat for review.

Complaints must be made by formal letter. This letter can be emailed to the apccsecretariat@finance.gov.pg or by post to

Department of Finance
ATTENTION: APC Committee Secretariat
Statutory Authority and Monitoring Branch
PO Box 710
Waigani, NCD, Port Moresby

Information provided

If a complaint has been made regarding a procurement of the committee, the committee will be requested to provide all information, records and documents in relation to the procurement. This can include emails or any other communications between the parties involved in the procurement.

Timelines

The APC Committee is required to investigate the complaint in a timely manner, usually within 15 days, and has the power to suspend procurement pending an investigation. No contract can be executed until the APC Committee makes a final decision.

Where a contract has not been finalised and the investigation has concluded that the procurement procedures were not been followed, appropriate remedial action will be taken. The committee may be requested to recommence a procurement.

Allegations of corruption

Any allegations of official misconduct or corruption can be referred to the Police or using the Department of Finance Phones Against Corruption by sending any text to 16321. The Department of Finance Internal Audit and Compliance Division is responsible for the process and all verified cases are investigated before criminal and legal investigation commences.

Records Management

The records to be maintained shall include a summary report of the procurement procedure used in respect of each contract, which shall indicate -

- (a) any and all material correspondence related to the procurement
- (b) a description of the objectives of the respective procurement
- (c) a list of the participating bidders and any minutes or records taken at pre-bid meetings
- (d) the bid prices
- (e) the bid evaluation criteria

- (f) all correspondence and documents related to TFEC including the recommendation reports
- (g) a summary of the evaluation and comparison of bids, including the grounds for rejecting any of the bids
- (h) where applicable, a summary of the proceedings of the administrative reviews including the decisions taken
- (i) a statement of the grounds for cancellation of procurement proceedings
- (j) any other information determined by the NPC

The records will be managed in hard copy until any transition by the NPC to electronic systems. This section will be updated on changes to the process to manage records. Procurement records will be maintained by the Procurement Committee secretariat until the last payment on the contract. Once completed, the records is to be transferred to the central repository of the NPC.

The records of the procurement process shall be open to inspection by the Commission or the APC Committee.

Procurements shall be recorded using the standard forms issued by the Commission to record all details of procurements and will be provided as part of the Committee Induction Pack.

Procurement committee annual evaluation and performance monitoring

The NPC Board will issue a request for specific information to be reported to the NPC. At minimum this information will be used to comply with National Procurement Act requirements to publish:

- details of all contracts awarded in the prior six months; and
- the name of the contractor; and
- the value of the contract; and
- the subject matter of the contract,
- identify in respect of each procurement whether the recommendations of the TFEC were followed

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