



## NATIONAL PROCUREMENT ACT PROCUREMENT INSTRUCTION

09/2019

### **SUBJECT: PUBLIC PROCUREMENT DISPOSALS**

#### **1 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) during the transition may issue PIs 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 PURPOSE**

Under Section 2 of the NPA , procurement is defined to include disposal of any types of goods, works or services or any combination of them. This includes all state assets including State Land and buildings.

The purpose of this PI is to provide the principles and procedures for public bodies and statutory authorities (agency/agencies) on disposing of public assets.

#### **3 PRINCIPLES FOR DISPOSING PUBLIC ASSETS**

Disposals will be conducted based on:

- Openness and transparency
- Defensibility
- Delivering best value for the State

The method of disposal should have a Whole-of-Government perspective and ensure maximum value is gained for the State. Persons involved in the process of disposal cannot benefit from the disposal.

Value can take many forms including financial (eg. generating revenue from sale) or in its utility (continued use by another agency) or achieving services or outcomes desirable for the State (eg. public spaces for community needs).

To maximise the use of assets to meet community and government needs, public and statutory body transfers (including sales) should be given priority over the sale of assets to the private sector.

## **4 REVIEWING ASSETS FOR DISPOSAL**

Public and statutory bodies should have strong custodianship of its assets and be undertaking an annual stocktake that would also identify assets for disposal.

Assets are not limited to smaller items. The definition of an asset is clearly identified under Section 2 of the Act. It includes all tangible and intangible assets of the State.

### **4.1 National Budget Procurement Plans to include disposals**

Public and statutory bodies should undertake periodic review of high value items such as land and buildings to assess how well they are performing to meet service delivery requirements and if these assets are surplus to existing or future service delivery needs.

Disposing of assets with a potential value over K500,000 are to be specified on the agency's Procurement Plan (Section 25 of the Act) to ensure:

- that valuable assets of the State are disposed of transparently and for the right purpose
- Other statutory and public bodies will have an opportunity to review these disposing assets and determine if it is suitable for its purpose prior to purchasing similar on the open market

### **4.2 Reasons for Disposal**

Reasons for the disposal of an asset include:

1. It serves no useful function in the delivery of the agency outcomes for the citizens of PNG.
2. It is not effectively utilised, in storage or beyond repair
3. Poses a workplace health and safety or environmental risk
4. Has been superseded by a new technology, design or functionality

When considering disposal, an agency should also identify if there are constraints such as (but not limited to):

- Social issues such as its current use by the community
- Cultural and heritage considerations that obligate the Government to retain the asset
- Environmental issues including contamination and workplace health and safety
- Stage of the economic cycle to determine the optimum time for disposal

These considerations may limit the method of disposal (eg. transfer instead of sale) or delay the timing of disposal.

## **5 DISPOSAL METHODS**

Disposal methods shall include:

1. Transfer between public and statutory bodies
2. Public Auction
3. Public Bidding
4. Disposal by destruction or scrap
5. Trade-in
6. Direct negotiations
7. Donations
8. Sales to Public Officers

### **5.1.1 Transfer to another Agency**

It is incumbent on the Government to ensure that public assets under its control are utilised efficiently and effectively. There are instances where public assets under the control of one agency may be more effectively utilised by another to achieve State outcomes. This method of disposal should be firstly considered before other methods.

### **5.1.2 Public Auction**

Public Auction is a disposal method open to all. It is appropriate for a high volume of low value assets for which there is a large number of potential bidders and there are no conditions or restrictions attached to the sale.

It is also appropriate where there is a large variety of assets to be disposed of in one location and there is no need to control who buys or uses the asset.

### **5.1.3 Public Bidding**

Public bidding is a disposal method open to all for high value assets, assets which has perceived value but it is difficult to value, unique assets or assets located in remote areas or where conditions need to be attached to the asset.

In some cases, public bidding may be required where it serves the public interest for an open and transparency method of disposal.

### **5.1.4 Sales to Public Officer**

Sale to officers, former officers at the end of their contract period and employees of the National Public Service occurs:

- (a) Where there is no likely benefit or financial advantage to the State in using any other disposal methods;
- (b) Where there are a small number of low value items, which are unlikely to attract public interest;
- (c) Where the personal use of particular assets would directly benefit the performance of staff in the execution of their duties for the State.

The definition of officers and employees of the National Public Service are defined by the Public Service Management Act.

### **5.1.5 Direct Negotiations**

Direct negotiation shall be used where national security, public interest, health and safety issues, legal, human rights or environment considerations are served when a sale is made to a particular bidder.

### **5.1.6 Destruction (including Scrap)**

Disposal by destruction is used on grounds of national security or public interest, health and safety, legal, human rights or environmental considerations and the asset has no residual value.

In some cases, assets are disposed because they are not in working order and the cost of fixing the asset outweighs its utility benefits. Prior to destruction, the disposing agency should assess if it can be repurposed, stripped for parts or converted for another use.

In some cases, the asset may have unwanted consequences from its non-destruction such as safety risks, residual chemicals or toxins or specific government branding that cannot be removed. In these instances, it is not suitable to use other methods of disposal and should be destroyed.

### 5.1.7 Trade-in

Trade-in shall be used where a public asset of the procuring or disposing agency will be upgraded in a convenient, economic and efficient way. In this instance, trading in a surplus public asset of the agency to offset the purchase price of a new asset.

A trade-in does not exempt a agency from complying with the Procurement Thresholds under Section 26 of the NPA for the procurement of the new asset. Thresholds are defined by the gross estimate of the procurement prior to trade-in.

Trade-in should not be used if it limits competition and value for money (eg. a trade-in is only accepted by one supplier).

### 5.1.8 Donation

Donation of a public asset shall be used where the public and statutory body is not likely to obtain payment for the public asset and will not be transferred to another agency. The assets could still generate use to serve other community needs in other ways.

## 6 PROCEDURES FOR DISPOSING

The following steps apply when disposing of a public asset:

- Step 1. The agency is to undertake an annual review of public assets and identify assets for disposal and appropriate methods of disposal outlined in Section 5.0.
- Step 2. The Departmental Head, or its Board if applicable, will approve items identified for disposal. This PI prohibits the breaking up of assets to reduce their value.
- Step 3. Where an asset has a disposal value greater than K500,000, the asset must be included on the National Budget Procurement Plan under Section 25 of the Act.
- Step 4. Sale to Public Officers or Donations regardless of value must be declared in writing to the National Procurement Commission Board for their approval prior to disposal.
- Step 5. Where the disposal is for less than K5,000 the agency will be the responsible disposing agency. All other disposals are the responsibility of the National Procurement Commission as the disposing agency.
- Step 6. The disposing agency are to form a committee of a minimum of two members with a representative of the agency and a representative of:
  - a. the National Procurement Commission (or its delegated committees); and/or
  - b. the First Assistant Secretary (Expenditure and Cash Management Division) Department of Finance; or
  - c. the Provincial/District Treasurer in the case of the Province or District.

In the case where the Department of Finance or the Provincial Treasury is disposing, the third member of the committee shall be the Assistant Secretary (Provincial and District Financial Management Division) or the Divisional Clerk and Accountant Expenditure in the case of Provincial or District Treasury.

In the case of a transfers of assets between entities, the Department of Finance Assistant Secretary Statutory Bodies Monitoring Branch will be a member.

At isolated locations, it may be necessary for the agency representative as sole member of the committee to carry out the inspection and assessment of items, however, it does not exclude other members from forming the committee. Inspections are to be documented and include photographs.

Step 7. The committee shall inspect, report and make recommendations in respect of disposing assets including its approximate condition and value. Where there are multiple assets, the report shall be consecutively numbered and itemised. The committee should also report on assets where it is considered the condition of is not due to fair wear and tear.

Step 8. The committee can seek a valuation report from a competent authority where appropriate such as the Valuer-General, Department of Works (ie. Board of Survey) or an external licensed commercial valuer.

Step 9. The committee will attach to the report a recommended method of disposal for each assets or groups of assets, reserve price (if any) and a planned process and timeline to undertake the disposal.

Perishable, toxic or hazardous items that can damage other assets or be a danger to health may be destroyed in anticipation the delegate's approval if directed by the committee.

Step 10. The report shall be submitted to the appropriate delegate for approval.

## **7 TRANSFERS BETWEEN PUBLIC AND STATUTORY BODIES WITH OR WITHOUT PAYMENT**

Each agency is responsible for the contingent costs associated with the asset being transferred.

This PI does not obligate a public or statutory authority to receive some form of payment of compensation for the transfer. However, if the transfer is an exchange between parties, and it is not in the form of payment but other assets, the National Procurement Commission will treat this as separate disposals.

## **8 PROCUREMENT DELEGATIONS**

In accordance with Section 77 of the NPA, the National Procurement Commission, delegate the power to dispose of assets:

1. under K5,000 vested with the Departmental Head. The Departmental Head has the power to delegate this authority to any person. If delegated, a delegation shall -
  - a) be by notice in writing executed by the Departmental Head;
  - b) come into force on the day of publication in the National Gazette or the date specified in the notice, whichever is the later;
  - c) be subject to such terms and conditions as the delegator thinks fit,

- d) and shall have a stated duration of the delegation, after which it will expire.
2. Disposals from 5,001 to K10 million remains vested with the National Procurement Commission. In accordance with Section 77 (3) of the NPA, the Board may delegate this power.
3. Any disposal more than K10 million requires the approval of the National Executive Council on recommendation by the NPC Board.

**9 DONATED ASSETS OR ASSETS TRANSFERRED ON THE COMPLETION OF AN INTERNATIONAL AGREEMENT PROJECT**

An asset that has been acquired by an agency by way of donation or transferred on the winding up of a specially funded project are public assets, and any disposal will fall under the scope of this PI.

**10 ENFORCEMENT**

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

**11 EFFECTIVE DATES OF PROCUREMENT INSTRUCTION**

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

**12 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: 13 SEPTEMBER 2019