



# National Procurement Commission

*Improving efficiency and transparency in Public Procurement*



## OFFICE OF THE CHAIRMAN

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26<sup>th</sup> October 2020

Board Members  
National Procurement Commission Board  
PO Box 6457  
BOROKO, NCD

My fellow Members,

**SUBJECT: PROPOSED AMENDMENTS TO THE NATIONAL PROCUREMENT ACT AND  
PROCUREMENT PROVISIONS WITHIN THE PUBLIC FINANCES  
(MANAGEMENT) ACT**

I refer to the recent directions given by right Honourable Prime Minister James Marape on amendments to the National Procurement Act 2018 to enable local contractors to apply for contracts up to K50 million for 100 per cent government funded projects. This is to ensure local companies and companies that are based in the country employing Papua New Guineans get first preference.

The Amendments are being drafted and the proposed changes have been attached for consultation. In addition to the local company preferences, Amendments are also proposed to clarify, correct and implement GoPNG public procurement policies, inclusive of:

- Supporting MSME and emerging industries to have the ability to tender for public procurement
- Restricting public procurement up to K50 million for nationally based companies
- Capturing disposal thresholds and methods
- Provide for a Restricted Bidding procurement where necessary in the State's interest including for economy & efficiency, national security or on the basis of limited suppliers
- Enabling advertising of tender opportunities through other means such as electronic notices
- Clarify the structure around the Act such as State Solicitor approval for contract variations, TFEC composition and delegations.

The proposed changes have been listed in chronological order and should be read in their entirety. I would appreciate your consideration and feedback on the proposed changes by 30th October 2020 to enable National Executive Council deliberations during 2020.

Yours sincerely,

DR KEN NGANGAN OBE PhD CMA CPA  
**Chairman**

PROPOSED AMENDMENTS TO  
NATIONAL PROCUREMENT ACT  
OCTOBER 2020

Section	Type of Amendment	Proposed Amendment	Rationale for Amendment
2	Recommended	<p>Replace definitions for citizen and National company</p> <p>“citizen” means a person who is a citizen of Papua New Guinea within the meaning of the Constitution <b>or who is otherwise lawfully resident and authorized to engage in work in Papua New Guinea;” and</b></p> <p>“national company” means a company:</p> <p>(a) that is registered and operates in Papua New Guinea; and</p> <p>(b) the majority of the voting shares of which are wholly owned by a citizen; and</p> <p>(c) the majority of the capital and assets of the company by value are owned and located in Papua New Guinea; and</p> <p>(d) where the directors and shareholders are all lawful residents of Papua New Guinea.</p>	<p>The PMJM request is: Requirement is for local contractors to get preference for contracts up to K50 million on 100% government funded projects. These contractors are defined as local companies and companies that are based in the country and employ PNG citizens.</p> <p>The previous definition restricted the definitions to only those that are 100% citizens and companies that were 100% owned/control as shareholders and directors by citizens.</p> <p>This definition is now broadened to capture companies majority owned and located in PNG. The definition of citizen is broadened to capture those authorised to work in PNG.</p>
12	Technical - Recommended for clarification	<p>The Board <u>shall carry out the functions, exercise the powers and manage and direct the affairs of the Commission and</u> shall approve and award all contracts for procurements <u>undertaken</u> <del>faecilitated</del> by the Commission.</p>	<p>It is the intention of the Act for the Board to also be a governance Board for the NPC, this amendment ensures that there is clarity in the functions of the Board to be more than approving procurement.</p>
26	Recommended	<p>26. PROCUREMENT THRESHOLDS.</p> <p>(1) Subject to this Act, the procurement thresholds for all public and statutory bodies are -</p> <p><u>(1A) The procurement thresholds and the management and control of disposals are the subject of Procurement Instructions under this Act.</u></p>	<p>The PFMA revoked any specific procedures and thresholds for disposals. Under the current NPA, any disposal up to K500,000 is within the management of the Department Head.</p> <p>Procurement Instructions 09/2019 has been issued requiring any disposal more than k5,000 and the method of disposals</p>

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			to determined by the Commission. Disposal is a key area of fraud and requires special management and control.
29	Recommended	For each procurement, the Commission undertakes for and on behalf of a public or statutory body, the <del>Chief Executive Officer</del> <u>Board of the Commission</u> , for and on behalf of the Commission, shall appoint a TFEC.	The Section contradicts the functions of the CEO under 18(3) that requires the CEO to have no capacity to direct the TFEC decisions. Guiding principle of the Act is that the CEO administers the functions of the Commission and is able to be separate from the procurement decisions at all points of the procurement. TFEC appointments are a procurement decision that resides with the Board.
31	Recommended	<p>COMPOSITION OF A TFEC.</p> <p>(1) Subject to Subsection (2), a TFEC shall consist of the following members -</p> <p>(a) at least one person appointed by the public or statutory body on whose behalf a procurement is being undertaken, who shall be the Chairman of the Committee; and</p> <p>(b) a <del>person member of staff of the Commission</del> with competence and experience in <del>facilitating the administrative management of</del> procurements <del>for public and statutory bodies</del> appointed by the Chief Executive Officer <del>of the Commission</del>; and</p> <p>(c) a person nominated by the Works Departmental Head where the procurement is related to works; and</p> <p>(c) <del>a person with legal expertise as determined by a lawyer appointed by</del> the State Solicitor; and</p> <p>(de) <del>a persons with financial expertise as determined an accountant appointed</del> by the Finance Departmental Head; and</p> <p>(ef) such other persons who, in the opinion of the <del>Chief Executive Officer</del><u>Board of the Commission</u>, have the necessary technical or financial skills required for the technical or financial assessment of the procurement.</p>	<p>Need to make TFEC more flexible, particularly when undertaking procurement at Districts locations.</p> <ol style="list-style-type: none"> <li>1. Works should only be a member for a TFEC related to road based projects. A member can be co-opted on TFEC that relate to engineering procurements, otherwise it is unduly resource intensive for Works.</li> <li>2. The terms “lawyer” and “accountant” are not defined under the Act and may not be feasible in all locations. Enabling expertise for procurement, finance and legal AS defined by CEO NPC, DoF and OSS respectively for these types of members.</li> <li>3. Disposal have a specific TFEC that requires certain office holders of the Department of Finance in charge with financial compliance and cash control to be part of the disposal committee. This has been specified in a Procurement Instruction 09/2019. This clarifies that disposal committees are distinct from the procurement committees.</li> </ol>

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		<p>(2) The <u>Board of the Commission</u> <del>Chief Executive Officer</del> may co-opt advisers to assist a TFEC in the discharge of its functions.</p> <p>(5) <u>The TFEC of a disposal are the subject of a Procurement Instruction under this Act.</u></p>	
32 AND 34	Technical – correcting an error	<p>32. FUNCTIONS OF A TFEC.</p> <p>(1) A TFEC shall be responsible for -</p> <p><del>(a) approving all technical and financial documentation to be released as part of a procurement; and</del></p> <p>(a) <u>undertaking ensuring that</u> the technical and financial evaluation of a procurement <del>is undertaken</del> promptly and in accordance with the requirements of the Commission and the APC Committee in accordance with the approved post National Budget procurement plan; and</p> <p><del>(c) approving compliance with tender documents in respect of the procurement under —technical and financial evaluation; and</del></p> <p><del>(d) approving compliance with procurement procedures in respect of the procurement under technical and financial evaluation; and</del></p> <p><del>(e) ensuring that best practices in relation to procurement are strictly complied with during the technical and financial evaluation of the procurement; and</del></p> <p><del>(df) ensuring compliance with this Act in respect of the technical and financial evaluation; and</del></p> <p><del>(eg) liaising directly with the Commission on matters regarding a procurement.</del></p> <p>(2) A TFEC shall, at the conclusion of its technical and financial evaluation of a procurement or at such other times as the <u>B</u>oard of the Commission requires, make a report in respect of its activities under Subsection (1) and submit the report to the <u>B</u>oard of the Commission.</p> <p><del>(3) A TFEC shall—</del></p>	<p>Under the PNG practices, the TFEC is established once the tender is advertised.</p> <p>The Act is written to include responsibilities that happen prior to the establishment of a TFEC. For example, check on the compliance of tender documents (responsibility of NPC), approving the procurement method (responsibility of NPC) or developing procurement documents (responsibility of the agency)</p> <p>These are technical errors of procedure.</p>

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		<p><del>(a) — recommend to the Commission the procurement procedure appropriate for the procurement; and</del>  <del>(b) — develop, in consultation with the relevant public or statutory body, solicitation or other procurement documents, for approval by the Commission; and</del>  <del>(c) — undertake technical and financial evaluations of a procurement and develop recommendations for contract awards to the Commission.</del></p>	
45 (2)	Technical – Recommended for clarification	<p>45. PROCUREMENT INSTRUCTIONS</p> <p>(1) All procurements shall be carried out in accordance with this Act, the regulations, guidelines and instructions issued under this Act.</p> <p>(2) The <u>Board of the</u> Commission may issue Procurement Instructions <del>or Guidelines</del>, not inconsistent with this Act, which are necessary or desirable for carrying out or giving effect to this Act and in general for the better control and management of procurement.</p> <p>(3) The <u>Board of the</u> Commission may issue procurement manuals <u>or Guidelines</u>, not inconsistent with this Act, for <del>instruction and</del> guidance on the implementation of any matter provided for in this Act for the better control and management of procurement.</p>	<p>The role of the Board is to oversee public procurement and the role of the Commission staff is to undertake the procurement. This amendment seeks to clarify the Board as the approving authority of any instruction which carries the force of the law.</p> <p>It is the role of the staff of the Commission, APC Committee and Office of State Solicitor to make recommendations for Instructions in relation to their respective responsibilities under the Act.</p> <p>The APC Committee has its own authority to issue Instructions under Section 45 of the Act for procurement planning.</p>
48	NEW	<p><u>Subject to this Section, a</u> procurement <u>under the control of the Commission-</u></p> <p>(a) with a value estimated by the Commission of up to K5<u>10,000,000.00</u>, <del>shall have a</del> <u>technical evaluation requirement that it is open to public tenders shall be procured</u> only by national companies and citizens with capacity to undertake or provide the goods, works or services; or</p>	<p>The requirement for procurement under K10M to be open to national companies (100% citizen shareholder/director).</p> <p>This is now change in accordance with PMJM release where up to K50M it is open to national enterprises:</p> <p>(a) that is registered and operates in Papua New Guinea; and</p>

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		<p><del>(b) — with a value estimated by the Commission of greater than K10,000,000.00 but less than K30,000,000.00, shall have a technical evaluation requirement that it is open to public tender only</del></p> <p><del>(i) — so that at least 50% of the value of the procurement is to be undertaken by national companies and citizens, with capacity to undertake or provide the goods, works or services;</del></p> <p><del>(ii) — in the case of a partnership, so that at least 50% of the partnership is held by national companies and citizens with capacity to undertake or provide the goods, works or services; and</del></p> <p>(b) with a value estimated by the Commission of equal to or greater than K530 million shall have a technical evaluation requirement that it is open to public tender by all companies and persons.</p> <p>(5) A procurement is not subject to Sub-section (3)(a) or (b) if the Board of the Commission directs that it is not in the interest of the State to so limit the procurement given, interests of National security or a lack of capacity of national companies and citizens to undertake or provide the goods, works or services.</p>	<p>(b) the majority of the voting shares of which are wholly owned by a citizen; and</p> <p>(c) the majority of the capital and assets of the company by value are owned and located in Papua New Guinea; and</p> <p>(d) where the directors and shareholders are all lawful residents of Papua New Guinea.</p> <p>Can consider the threshold is removed and instead provide for two types of procurement method – national open bidding and international open bidding. The Thresholds can be set by the Board via Procurement Instruction. This would make it easier to change thresholds in the future and enable them to be increased or removed for different categories of industry/procurement etc.</p> <p>Additional section added to limit the cost and expense of applying this section when it is clear that there is no national suppliers available to effectively run a procurement. For example, the purchase of firearms by Defence or printing of currency by Bank of PNG.</p>
58(3)(f)	Recommended	<p>58. REGISTRATION, QUALIFICATION AND PRE-QUALIFICATION OF BIDDERS.</p> <p>(3) The qualifications required of the bidder are -</p> <p>.....</p> <p>(f) that the bidder has not less than three years relevant experience prior to the application for registration <u>or such other experience as is specified in the Statement of Requirements.</u></p>	<p>Provision formerly prohibited bids from suppliers without experience, but doing so creates barriers for emerging markets and or SMEs/entrepreneurs that offer innovative services. Need to balance the protection of the State from unscrupulous companies versus the need to support new businesses and markets.</p>

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			<p>The provision provides for a default of three years experience, unless otherwise specified in the Statement of Requirements that is released as part of the Tender Documents.</p>
66	Technical - Recommended for clarification	<p>66. DETERMINATION OF PROCUREMENT METHODS.</p> <p>(1) Subject to this Part, <u>open bidding is the preferred procurement method of the Commission.</u> <del>shall, by</del> Procurement Instructions <u>shall</u> <del>shall</del> determine <u>other the</u> types of procurement methods which may be used for procurements.</p> <p><del>(2) — No procurement method other than the procurement methods determined in this Part shall be used for any procurement.</del></p> <p><del>(23) T</del><u>In determining the</u> type of procurement methods <u>shall be supported by which may be used for procurements under this Part,</u> the Commission <u>by providing</u> <del>shall give all</del> details as are reasonably necessary to guide bidders and staff of the Commission in compliance with this section.</p>	<p>The intention is to restructure this section to clarify its intent. This section is to provide for the Board of the Commission to define alternative procurement methods in addition to the procurement method of Open Bidding under the Act. There are multiple types of procurement such as Expression of Interest, Request for Quotation, Single-source, Request for Proposal and Restrictive Bidding.</p> <p>Procurement should be fit-for-purpose and be guided by the complexity and risk of the procurement versus the cost and efficiency of undertaking the procurement.</p> <p>The Commission can then choose the type of procurement best suited under Section 67.</p>
68	Technical - Recommended for clarification	<p>68. OPEN BIDDING.</p> <p>(1) Except as provided for in this Part, open bidding shall be used for all procurements <u>under the control of the Commission.</u></p> <p>(2) Open bidding shall be open to participation on equal terms by all providers.</p> <p>(3) Procurements under the threshold level for minor procurements below which public and statutory bodies may procure themselves <del>using a simplified procurement system approved by the Commission</del> do not require public advertisement.</p> <p><del>(4) — Procurements under the threshold level for minor procurements below which of which public and statutory bodies may procure themselves using a simplified or standardised</del></p>	<ol style="list-style-type: none"> <li>1. Removes the need for a public or statutory body to publicly advertise for procurement under K500,000. This procurement is usually undertaken by requesting three quotations from suppliers and not through an advertisement.</li> <li>2. EGovernment services will become more expected and tendering is mostly to move to eProcurement with advertising by website. This change is designed to enable the Board to also specify other electronic forms of advertising for bid opportunities.</li> </ol>

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		<p><del>procurement system approved by the Commission require public advertisement through advertisement of the procurement opportunity by a notice published in at least one widely read national newspaper notification as is specified in the Procurement Instructions under this Act.</del></p> <p>(45) Procurements undertaken by the Commission require public advertisement through advertisement of the procurement opportunity by a notice published in at least one or two widely read national newspaper <u>or as is otherwise specified in the Procurement Instructions under this Act.</u></p> <p><del>— (7) Bidding documents shall be issued to prospective bidders at a fee as determined by the Commission.</del></p>	<p>3. The removal of the bidding fee is to align the Act with changes to the non-tax revenue where fees are under the control of the Finance Department Head.</p>
68A	NEW	<p><b><u>68A. RESTRICTIVE BIDDING.</u></b></p> <p><u>(1) The Commission may for reasons of economy and efficiency and subject to the approval of the APC Committee engage in procurement by means of restricted bidding</u></p> <p><u>(a) if goods, works or services are available only from a limited number of suppliers or contractors; or</u></p> <p><u>(b) if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured.</u></p> <p><u>(2) Where the Commission engages in restricted bidding on the grounds referred to in this section, unless determined otherwise by Procurement Instruction it shall:</u></p> <p><u>(a) invite tenders from the suppliers and contractors who can provide the goods, works or services;</u></p> <p><u>(b) select in a non-discriminatory manner, a number of suppliers or contractors to ensure effective competition.</u></p>	<p>There are a number of instances where procurement has been delayed or undertaken in a costly manner when it clearly is not going to obtain value for money using a competitive bidding process.</p> <p>For example, the specific printers required to print NID cards have been delayed over 12mths because of procurement problems when the machines have only 3 suppliers internationally. Another example is the purchase of reagents for medical laboratories when these reagents are specific to a machine and are purchased directly from the manufacturer of the machine.</p> <p>Allows the Commission for economy and efficiency and subject to the approval of the APC Committee to monitor the use, to undertake procurement by means of restricted bidding. Specifies that the minimum requirements to engage</p>



Section	Type of Amendment	Proposed Amendment	Rationale for Amendment
		<p><u>(3) Where the Commission engages in restricted bidding, it shall by notice publish the award by public advertisement in a widely read national newspaper or electronic notice</u></p>	<p>under restricted bidding. Requires it is published as a restricted bid when awarded by Board.</p>
69 (1)	Technical – correcting an error	<p>69. CERTIFICATES OF INEXPEDIENCY.</p> <p>(1) <del>Subject to the ratification by the National Executive Council, the</del>The Board may grant a Certificate of Inexpediency which authorises the use of a procurement method other than open bidding, subject to such terms and conditions as it thinks fit.</p> <p>(2) The Board shall only grant a Certificate of Inexpediency to meet the interests of the State in the event of -</p> <p>(a) an emergency declared by the National Executive Council created by -</p> <p>(i) civil disturbance; or</p> <p>(ii) natural disaster; or</p> <p>(iii) health emergency; or</p> <p>(iv) matters relating to national security or defence emergency; or</p> <p>(b) subject to the terms of the <i>PFMA</i>, negotiations for a loan or the procurement of a <u>and related to a</u> loan to a public or statutory body.</p> <p>(3) The method and duration of procurement, including specifics and such other requirements for <u>a procurement under this Section</u><del>an emergency procurement</del>, shall be as determined by the Procurement Instructions under this Act.</p>	<ol style="list-style-type: none"> <li>1. The phrase – Subject to the ratification of the NEC may be interpreted incorrectly to mean any COI issued has to go back to NEC to get ratified. All that is needed is the initial approval to proceed with a loan (provided by NEC under the PFMA) or the declaration of the emergency from NEC. The COI flows after the NEC approval from the Board without going back for the ratification.</li> <li>2. Change also clears interpretation of procurement of loans as a loan requires multiple procurements for technical services such as Investment Banks, printing of prospectus or obtaining bank guarantees etc.</li> <li>3. The Board has the capacity to set the terms and conditions of any COI under the Act. The current Act incorrectly states that this role is only for Emergency Procurement and not any procurement under this Section.</li> </ol>
70	Recommended	<p>70. APPROVAL BY STATE SOLICITOR OF CONTRACTS.</p> <p>(1) Subject to this Part, all contracts for procurements <u>undertaken by the Commission</u> shall be drawn, approved and cleared by the State Solicitor.</p> <p>(2) The Commission and public and statutory bodies may use, without alteration or amendment, contract formats for procurements drawn and approved by the State Solicitor.</p>	<p>The Act intended that a contract cannot be altered or amended without being drawn and approved by the State Solicitor. This change and addition to the Section aims to make it sure that it is clear that a variation to a</p>

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		<p>(3) The Commission and public and statutory bodies shall deliver to the State Solicitor whenever he requires, complete and accurate copies of all files, documents, bids, correspondence and contracts relating to any procurement, irrespective of whether or not the procurement was completed.</p> <p><u>(4) A variation to a contract drawn, approved and cleared by the State Solicitor under this section is subject to approval and clearance by the State Solicitor.</u></p>	<p>contract is required to be approved and cleared by the State Solicitor post execution of the contract.</p>
73	Technical – correcting an error	<p>73. CONTRACT MANAGEMENT.</p> <p>(1) <u>The APC Committee may require All contracts arising from procurements undertaken by the Commission shall have</u> the contract management <u>is of each contract</u> assigned to third party contract management services, which shall independently manage a contract on behalf of the Commission.</p>	<p>Current legislation requires that all contracts must be managed by 3<sup>rd</sup> parties unless otherwise specified by the Board. Change made to make 3<sup>rd</sup> party management an exception rather than the default. Also requires the APC Committee to request it – so it can be addressed during Procurement Planning phase as the current legislation requires the 3<sup>rd</sup> party contract management to be paid from the same appropriation as the procurement.</p>
77 (3) (4) (9)	Technical and Recommended	<p>77. DELEGATION.</p> <p>(1) Subject to this Act, a person vested with a power, role or responsibility under this Act may delegate that power, role or responsibility to any person <u>who is a staff of the Commission or a member of the board of the Commission.</u></p> <p>(3) The Board may delegate, on such terms and conditions as it thinks fit, its procurement function <u>to a public body or statutory authority at a National or Sub-National at a provincial, local and district</u> level -</p> <p>(a) at a provincial level, a Provincial <u>Government</u> Committee of the Commission; or</p> <p>(b) at a local-level, a Local-Level <u>Government</u> Committee of the Commission; or</p> <p>(c) at a district level, a District Committee of the Commission.</p>	<ol style="list-style-type: none"> <li>1. The powers of the Board are delegated being delegated to Sub-National and special committee. These are not staff of the Commission or members of the Board. The phrase is being corrected and similar to the wording of the PFMA.</li> <li>2. In addition to Provincial, District &amp; Local NPC Committees, allows for establishment of specialised NPC committees by delegation and in line with 07/2019 Procurement Instruction.</li> <li>3. Tidying up the language around the Provincial, District and Local-level committees</li> </ol>

Section	Type of Amendment	Proposed Amendment	Rationale for Amendment
		<p><u>(d) specialised, at a public body or statutory authority level, a Special Committee of the Commission</u></p> <p>(4) The Commission shall not delegate its functions under Subsection (3) unless the Provincial Government, Local-Level Government, <u>or public body or statutory authority</u> <del>or the relevant District Development Authority</del> has been certified under <u>Section 28 of</u> this Act that it -</p> <p>(a) has the capacity to engage in the procurement processes; and</p> <p>(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 Government or Local-Level Government, including the relevant District Development Authority.</p> <p><u>(9) The members of a Special Committee shall be determined by the Board of the Commission.</u></p>	

PROPOSED AMENDMENTS TO  
Public Finances (Management) Act

Section	Type of Amendment	Proposed Amendment	Rationale for Amendment
40 (5) (6)	Technical – correction an error	<p>40. APC COMMITTEE POWERS AND FUNCTIONS.</p> <p><del>(5) — Subject to this section, all payments for all procurements within the jurisdiction of the Commission shall be processed and paid only with the written agreement of the Department of Finance.</del></p> <p><del>(6) — Subsection (5) shall not apply to—</del></p>	This is a technical error. In previous policy submissions prior to the drafting of the NPA, all payments related to APC contracts were going to be consolidated and paid from a specific procurement trust. This was not approved by Government.

Section	Type of Amendment	Proposed Amendment	Rationale for Amendment
		<p><del>(a) — Provincial Governments or Local level Governments established under the Organic Law on Provincial Governments and Local level Governments in respect of funds used by them for the payment for procurements when the funds were in the General Revenue Fund established for that Provincial Government or Local level Government; or</del></p> <p><del>(b) — District Development Authorities established under the District Development Authorities Act in respect of funds used by them for the payment for procurements when the funds were in the possession, power or control of a District Development Authority.</del></p>	<p>Payments and management of the commitments are the responsibility of agencies who are managing the contracts. All payments are made through the finance system and no additional approvals are required outside the existing controls around payments.</p>
44 (2)	Technical – correction an error	<p>44. CERTAIN CONTRACTS NULL AND VOID.</p> <p>(2) A contract for the purchase of property or stores or for the supply of goods or services entered into, or purported to have been entered into, by or on behalf of the State, in respect of which purchase or supply -</p> <p>(a) in the case of proposed expenditure exceeding <del>K5</del>100.000.00, the provisions of this Part have not been complied with in relation to the purchase or supply; or</p> <p>(b) in the case of proposed expenditure not exceeding <del>K5</del>100.000.00, no Authority to Pre-Commit Expenditure has been granted or no Integrated Local Purchase Order and Claim has been issued, is null and void.</p>	<p>Aligns this section to the s26 National Procurement Act thresholds of K500,000 for contracts requiring procurement managed by the commission. The K100,000 was the old threshold limit pre 2003.</p>