

**PART 13 - MAJOR PROCUREMENTS – (COSTING K100,000 AND ABOVE)****DIVISION 1 – PROCUREMENT THROUGH SUPPLY AND TENDERS BOARDS**

1. All procurements of K100,000 or more are to be conducted through the relevant Supply and Tenders Board. A list of these Boards, their purpose, membership, and powers is provided in Part 14.

**DIVISION 2 – AVAILABLE PROCUREMENT PROCESSES****2. Public Tenders to be Used:**

Section 40 of the Public Finances (Management) Act prescribes that goods, works and services with a value greater than K100,000 are to be purchased through a public tender process as the public tender process provides government with the best chance of obtaining a “value for money” outcome.

3. Public tenders involve the widespread advertising of opportunities to supply the government with the goods or services required. They promote competition. This differentiates them from selective tenders, expressions of interest and other procurement mechanisms.
4. Selective tenders are NOT allowed as they restrict the level of competition.
  - a. Expressions of Interest (EoI's) may be used to provide market research, but are not an acceptable procurement process in themselves, and must be followed up with one of the available procurement processes (eg public tender). Contractors cannot be short listed through the use of EoI's.
5. The processes available for procurement must also be used for the disposal of items no longer required by government.
6. In circumstances where a Supply and Tenders Board issues a “Certificate of Inexpediency”, the public tendering process will not apply. A “Certificate of Inexpediency” may only be issued in exceptional circumstances as outlined in Division 4 of Part 13.

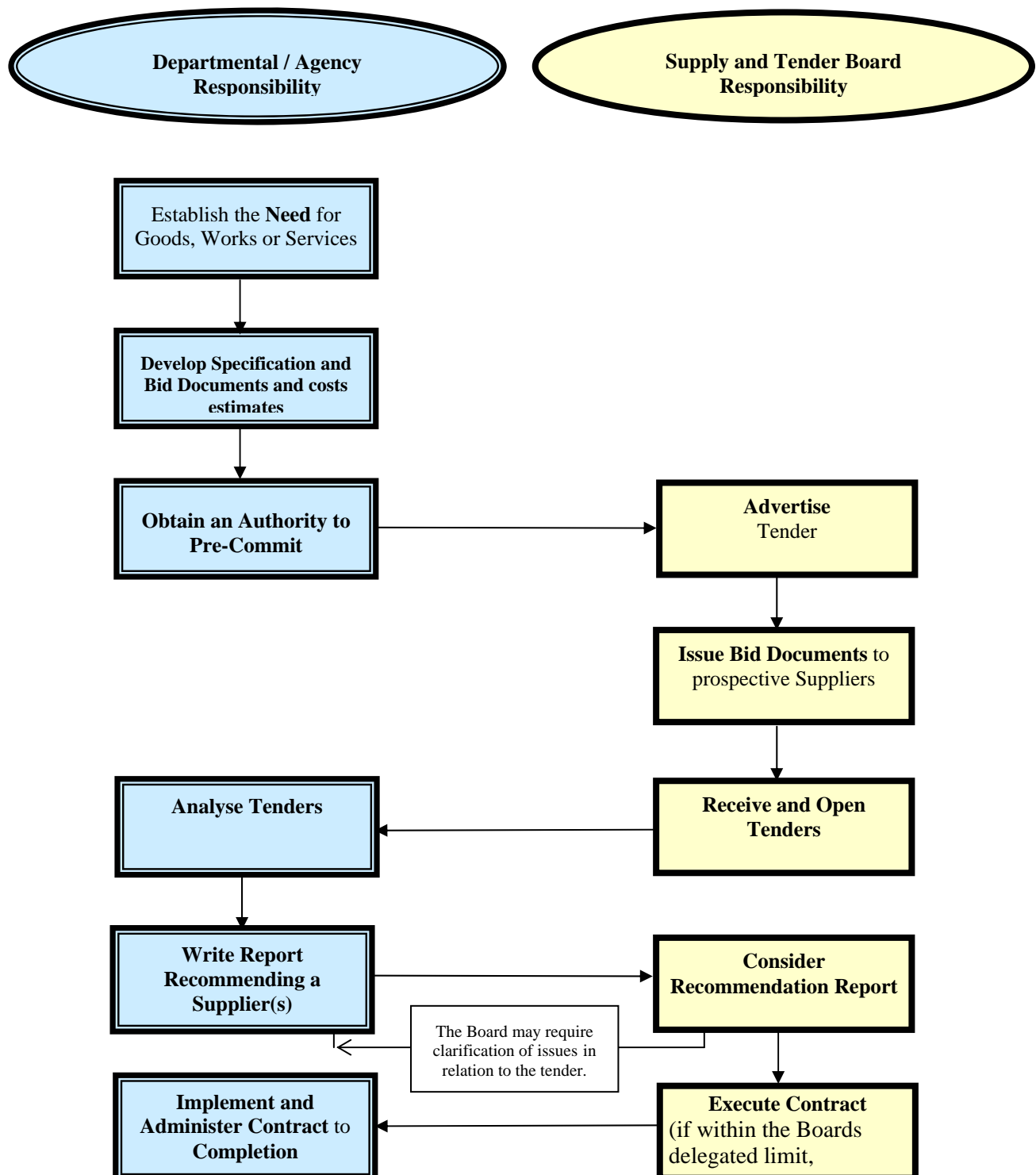
**7. International Financing Arrangements:**

In circumstances where the terms of an agreement with an international organisation under which the Government of PNG is to receive monies, make specific provision for the manner in which tenders will be invited for contracts performed as a result of the agreement, other procurement processes may be used. However, in order to maximise the extent to which “value for money” is obtained, all efforts should be made to ensure that the public tendering process is specified as the appropriate procurement process when drafting such international agreements.

### DIVISION 3 – PUBLIC TENDERING PROCESS

8. The key responsibilities in the public tendering process are outlined in the diagram below:

#### Key Responsibilities in the Public Tendering Process



The diagram above has been provided to assist Supply and Tenders Boards, and purchasing Departments and agencies to:

- Understand the tender process used for major procurements, and
  - Separate the responsibilities and accountabilities within the procurement process in accordance with the Public Finances (Management) Act and good procurement practice.
9. These key steps should be followed by all agencies and Supply and Tenders Boards involved in a public tender. Each step is briefly outlined below:

a. Establish the Need for Goods, Works and Services.

Departments / agencies should consider carefully why they require the goods, works or services that are proposed to be purchased. The purchase should be prioritised (in importance) in accordance with approved plans. An estimated cost must also be established and approved in the annual budget.

b. Develop a Specification and Bid Documents

The bid documents should consist of:

- 1) **Conditions of tendering** – the rules of tendering
- 2) **Specification** – a clear description of the goods or services that the Department wishes to buy
- 3) **Draft Conditions of Contract** – a draft contract that will form the basis of the final contract agreed between the Government of PNG and the successful supplier
- 4) **Standard Tenderer Response Sheets** – standard forms that will enable the Tenderer to clearly define their offer, and the Department to easily evaluate and compare each tenderer's offer
- 5) **Selection criteria** – publication of Selection criteria is required, to assist in establishing a transparent tendering process.
- 6) **Pre-tender cost estimates**

Wherever possible, standard template bid documents (issued by the Central Supply and Tenders Board) are to be used. It is however, the **responsibility of the Department or agency to produce high quality bid documents**. The Department should generally use the people it wishes to have evaluate the tender, to also develop the bid documents; including the selection criteria.

c. Obtain an "Authority to Pre-commit" (APC) Expenditure and other requirements.

The process for obtaining an Authority to Pre-Commit Expenditure (APC) is clearly documented in Attachment 1 to Part 13 of this manual. An APC confirms that funds will be made available to the supplier once a contract has been executed and fulfilled. **A Supply and Tenders Board must not invite a tender without an APC** having been issued.

d. Advertising the Tender.

Tender advertisement is designed to inform suppliers of opportunities, promote transparency and equal opportunity, and create a competitive environment.

For ***goods and services***; where the tender is valued at:

- Greater than K100,000 and less than K10.0m it must be advertised in a national newspaper with large circulation (eg "The National" or the "Post-Courier")
- Greater than K10.0m it must be advertised in at least two national newspapers and relevant international media.

For ***capital works and construction***; where the tender is valued at:

- Greater than K100,000 and less than K10.0m it must be advertised in a national newspaper with large circulation (eg "The National" or the "Post-Courier")
- Greater than K10.0m it must be advertised in at least two national newspapers and relevant international media.

e. Issue Bid Documents.

Bid documents must be issued to all prospective tenderers that have paid the required fee. The fee is to recover the cost of reproduction of the bid documents. Documents are issued by the Supply and Tenders Board, which must also retain a list of all individuals and companies receiving the bid documents along with their contact details.

f. Receiving and Opening Tenders.

The Supply and Tenders Board will arrange for tenders to be opened on the day that the tender closes. All tenders will be opened "publicly". Departmental/ agency representatives should be encouraged to attend the public opening, along with representatives of the companies that have submitted bids.

The Supply and Tenders Board representative at the opening will read out the following information in relation to each bid:

- Company Name, and
- Price
- Submitted Bid Securities (if applicable)

Where more than one bid is received from a company, the detail of each offer submitted must be read out. The Supply and Tenders Board representative then formally registers all copies of offers. The Supply and Tenders Board will hold one copy of each tender, whilst all subsequent copies will be given to the Department for evaluation.

The only exception to this will be when the Conditions of Tendering require a "two envelope" offer, where companies are required to submit details of their price in a separate envelope to qualitative aspects of their offer.

In this case initially only the Company Name will be read out publicly. Once the Department has completed its qualitative (non financial) analysis, a second public opening will be held where prices will be read out.

g. Analysing Tenders.

Upon advice from the Supply and Tenders Board, Departments are to nominate suitably qualified staff or consultants to undertake the tender evaluation. These staff will be known as the "Technical Evaluation Committee" (TEC). The Supply and Tenders Board may reject one or more of the nominations, in which case the Department is to offer a substitute.

The TEC is a small team of specialists from the Department(s), which under the direction of the Supply and Tenders Board, evaluate the tenders. The role of the TEC is to carry out the tender evaluation in accordance with the Public Finances (Management) Act, Regulations and Financial Instructions, using the processes outlined in the "Good Procurement Manual". In a practical sense this requires the TEC to evaluate tenders according to the requirements of the bid documents, and previously defined selection criteria.

The TEC must follow the steps outlined below when analysing tenders:

- STEP 1.       **Read ALL** of the Offers
- STEP 2.       **Clarify** - Write to any tenderer to clarify aspects of their tender that are unclear. Be sure that you do not create a "counter-offer" in doing this – consult people with a good understanding of contract law if in any doubt. The Central Supply and Tenders Board Secretariat can also advise you in relation to such matters.
- STEP 3.       **Rate the Qualitative (Non-Cost) aspects** (Technical, Capacity, Experience, Past Performance, Integrity, Financial status, Contractual, Financial, Other) of each tenderers offer against the selection criteria previously established.
- STEP 4.       **Identify the Price** of each Tenderer and adjust it for all or any of the following:

- a) Arithmetic mistakes made by the Tenderer
- b) Significant "whole of life" costs that vary across the different offers
- c) Any price variation or foreign exchange exposures borne by the GoPNG

**The adjusted price can now be used to rank tenderers in relation to Cost.**

**STEP 5. Make a transparent and supportable judgment,** based upon the Qualitative ranking of each tenderer and Adjusted Price, as to which offer represents best "value for money" for the GoPNG.

Where doubts exist within the TEC as to how an evaluation should be conducted the TEC may seek guidance from the Supply and Tenders Board to which it reports.

**h. Write the Recommendation Report.**

The TEC must ensure that the evaluation and Recommendation Report is undertaken promptly, and within the validity period specified in the Conditions of Tender.

The TEC must write a recommendation report designed to:

- 1) Describe the procurement process used to arrive at the recommended tenderer, so that the Supply and Tenders Board is able to certify that the procurement has taken place in accordance with the Public Finances Management Act, and
- 2) Outline why the recommended tenderer represents "value for money".

A valid, approved APC must be included with the Recommendation Report.

- 3) All bidders ranked must be included in the recommendation to the Board.

The "Recommendation Report" **MUST** be signed by each of the people in the TEC, as well as the Departmental / Agency Head.

**i. Consideration of the Recommendation Report.**

Supply and Tenders Boards **MUST** satisfy themselves that:

- 1) The tender has been conducted in accordance with the Public Finances Management Act, Regulations and Financial Instructions, and
- 2) The recommended offer represents "value for money".

In carrying out this role, Supply and Tenders Boards should ask inquiring questions of purchasing Departments and agencies where information presented is deficient. Recommendations must not be approved until the Board is confident that the abovementioned conditions have been met.

The Supply and Tenders Board is not obliged to accept the recommendation of the TEC. However, when the Board disagrees with the TEC's recommendation, in the first instance the Board is to discuss the matter with the TEC. If required, the TEC is then required to consider additional information provided by the Board. If deemed appropriate the TEC is to prepare a revised evaluation report.

In the event that the Board disagrees with the initial and subsequent evaluations, the Board may disregard the TEC's recommendation and award the contract, based on the Board's sole recommendation. In this event the Board must prepare its own evaluation report with clear and comprehensive justifications in accordance with the law, for the recommended award. The Board must also attach to their evaluation report the TEC's evaluation report(s) and all relevant correspondence in regards to the disagreement of the recommendation.

Where an organization disagrees with a Boards decision, a formal complaint may be pursued under Division 6 of Part 14.

j. Contract Execution.

The Supply and Tenders Board Chairman may execute a contract within the Boards delegated authority, once the Supply and Tenders Board has approved the recommended tenderer.

Where the contract consideration exceeds the Boards delegated limit, the Chairman of the Board will refer the Board's recommendation with supporting documents to the National Executive Council through the Minister responsible for the Department.

Contracts should be executed by the signing of a single contract agreement by all of the parties to the agreement. *Letters of Acceptance must not be used for contract execution.*

The State Solicitor must sight all contracts before they are executed, **unless** a template contract that has previously been given blanket approval by the State Solicitor is used. In this circumstance, a copy of the signed contract must be lodged with the State Solicitor for information.

The Supply and Tenders Board is also responsible for completing the relevant section of the APC form (FF5A), by inserting details of the successful supplier, its file number, and stamping the form. The "Blue" copy of the APC is to be sent to the Department of Finance, whilst the original and "Green" copy are to be sent to the contract officer nominated by the Department on the APC.

The Supply and Tenders Board must retain a photocopy of the approved APC on their file. The APC process is fully detailed in Part 10, Attachment 1.

Section 47 (3) of the Public Finances (Management Act) requires every Minister whose portfolio establishes a contract greater than K5.0m to provide a copy of that contract to Parliament at the first sitting of Parliament after the execution of the contract.

k. Implement Contract and Administer to Completion.

Once a contract is executed, the purchasing Department / agency is responsible for the effective administration of the contract in accordance with the Public Finance Management Act, Financial Instructions and good accounting practice.

For assistance in relation to contract implementation, refer to Division 7 - "Contract Implementation" in this part.



**DIVISION 4 – CERTIFICATE OF INEXPEDIENCY**

10. Section 40, (3), (b) of the Public Finances Management Act provides Supply and Tenders Boards with the powers to “certify that the inviting of tenders is impracticable or inexpedient”.

11. A Supply and Tenders Board must ensure that there is a valid approved APC for the procurement before approving a Certificate of Inexpediency.

12. A “Certificate of Inexpediency” must clearly identify the:

- a. Supplier, and
- b. Department / agency requesting the certificate, and
- c. Name and signature of the Departmental / agency head requesting the certificate, and
- d. Goods, works or services being procured, and
- e. Value of the procurement, and
- f. Reason for the certificate to be issued, and
- g. Date on which the Certificate is awarded, and
- h. Name of those Board members issuing the Certificate, and
- i. Name and signature of the Chairman of the Supply and Tenders Board issuing the certificate.

13. A “Certificate of Inexpediency” cannot be issued to retrospectively cover a contract already executed.

14. Certificates of Inexpediency will only be issued in situations where a declared:

- a. Natural Disaster, or
- b. Defence Emergency, or
- c. Health Emergency, or
- d. Situation of Civil Unrest

exists, **and** procurement processes must be undertaken urgently, to remedy the situation.

Supply and Tenders Boards must be prepared to hold extraordinary meeting(s) where these declared situations have arisen, in order to expedite procurements.

15. In the past, "Certificate of Inexpediency" have enabled Departments and agencies to avoid the public tendering process. Certificates have generally been issued on the basis that:

- a. There is only one suitable supplier, or
- b. The Department has "run out of time" to conduct a proper tendering process

Closer examination of the former justification generally means that the specification for the goods or services is biased in some way. The second justification (lack of forward planning by departments) is no longer acceptable. Departments must now be planning their major procurements in a timely manner.

16. Contract Execution (refer to processes under Public Tendering)

**DIVISION 5 – CONFIDENTIALITY**

17. Section 46 of the Public Finances Management Act requires members of Supply and Tenders Boards, Secretariat staff, technical evaluation staff and other public servants NOT to discuss (or communicate with by non verbal means) the contents of a tender except when:
- a. Recording details of the tender in the Tender Register
  - b. Preparing a notice of acceptance of late tender
  - c. Giving advice to the Board on the tender
  - d. Considering the tender at a Board meeting
  - e. Making a recommendation that involves reference to the tender
  - f. Causing notice of the tender to be sent to other tenderers
18. Under no circumstances are Supply and Tenders Board members, Secretariat staff, technical evaluation staff or other public servants to communicate the details of a tenderers offer to another tenderer or potential tenderer, or their agent or affiliate except where details of successful tenderers are published in the Boards Annual Report, or other general publicly available reports.

**DIVISION 6 – CONFLICT OF INTEREST****19. "Avoidance of Conflict of Interest"**

The private interest of a GoPNG employee, Supply and Tenders Board member, appointee or representative, must under no circumstances be allowed to conflict with the duties of the person as a member of a Supply and Tenders Board, Secretariat staff to a Supply and Tenders Board, evaluation committee / team, or as a Head of Department, or other relevant position, whilst involved in a major procurement.

A conflict of interest situation may arise from the following:

- A conflict exists, or
- A conflict might reasonably be thought to exist, or
- There is the potential of a conflict.

**20. Action When a Conflict of Interest Situation Arises:**

A GoPNG employee, Supply and Tenders Board member, appointee or representative in a "Conflict of Interest" situation in relation to a:

- Major Contract, or
- Proposed Major Contract

**MUST** disclose the nature of their interest to the Board, and

**MUST NOT** take part in any evaluation or deliberations with respect to the contract, *and*

**MUST NOT** take part in any recommendation with respect to the contract, *and*

**MUST NOT** be involved in the Administration with respect to the contract, *and*

**MUST NOT** attempt to influence others involved in such tasks.

The Secretary to the Supply and Tenders Board must record the disclosure of conflict of interest situations in the Board minutes, and related contract files.

## DIVISION 7 – CONTRACT IMPLEMENTATION

21. This division explains the relationship between key contract participants including their usual roles and obligations. Important contract administration issues are outlined in order to assist Contract Managers to fulfil their role.

### 22. Contract Parties and Relationships:

There are two principal parties to a contract; the GoPNG and the Contractor. The contract is established on behalf of the GoPNG by an Executing Authority (either Chairman of the Supply and Tenders Board or the Governor General).

### 23. Contract Manager:

The Contract Manager manages the implementation of the contract on behalf of the GoPNG. This person may be either a Public Servant or a Consultant appointed for the purpose (if the contract is either large or complex). All GoPNG contracts must have a nominated Contract Manager (sometimes referred to as; Project Manager, or Superintendent, or Engineer) and contact details of this person provided to the Contractor.

### 24. Principles of Delivery and Performance:

A number of key principles are embodied in good contract implementation. These are detailed below:

#### a. Accountability and Responsibility

Once the contract is agreed and signed (in accordance with the law), both parties are legally accountable and responsible to carry out their respective responsibilities under the contract. The Contractor is responsible to carry out the works/goods/services as stated in the contract. GoPNG and its Contract Manager are responsible for duties including; providing access to sites and information, responding to requests and timely payments.

#### b. Timeliness

Both parties are required to undertake duties in a timely manner. The contract will normally state the time within which these responsibilities are to be carried out. However regardless of whether stated in the contract or not, respective responsibilities must be actioned in a reasonable timeframe.

#### c. Knowledge of Contract Administration and Contract Documents

The Contract Manager must have a good working knowledge of contract administration within the relevant specialist field. The Contract Manager must have a comprehensive knowledge of the contract documents. Contractors will take advantage of Contract Managers who either have inadequate skills or do not understand the contract documents. **Both the Contract Manager and Contractor must have a properly executed copy of the agreement.**

d. Good Documentation

The Contract Manager administering the contract must maintain documentation to ensure the Contractor delivers the works/goods/services as stated in the contract and that accounting and payment details are clearly documented. During a contract disagreement or dispute, good documentation will assist with achieving a quick and fair solution.

**25. Contractual Obligations:**

The following obligations are usually common to all contracts regardless of their scale and nature:

a. Government of Papua New Guinea

- Appoint a Contract Manager and allow this person to administer the contract impartially, without influence and in accordance with the law.
- Provide unhindered access for the Contractor to implement the contract.
- Make timely payment for completed portion(s) in accordance with the contract agreement.
- Allow the Contractor to complete the whole contract, unless there has been mutual consent to change the scope of the contract or the Contractor is in breach of the contract.
- Provide information and directions in a timely manner.
- If provided for under the contract, provide work, equipment, materials and services in a timely manner.

b. Contractor

- Carry out and complete the works/goods/services under the contract
- Complete the works/goods/services to the required standard under the contract in a professional manner and with due care.
- To provide early notice of expected variations to the contract.
- To proceed at an appropriate rate and complete the contract either as specified under the contract or within a reasonable time, where detailed timings are not specified in the contract.

c. Contract Manager

- To act as the Government's agent to administer the contract to ensure timely and satisfactory completion of the contract.

- To implement the contract in accordance with its terms and conditions.
- To act impartially to make determinations that affects both parties, such as variations, latent conditions and liquidated damages.
- To supervise, make determinations, give instructions, exercise discretion and certify completed portions of the contract.
- To certify payment(s) for completed portion(s) of the contract.
- The Contract Manager *must endeavour to promptly* settle disagreements with the Contractor and the Government of Papua New Guinea in a professional, impartial manner. The Contract Manager must maintain accurate records of the disputed issue, as these records will be critical to any possible legal determination.

## 26. Contract Administration:

The Contract Manager administers the contract on behalf of the Government of Papua New Guinea. Specific contract administration issues that must be considered by the Contract Manager are:

### a. Documentation

Maintain an updated copy of the contract agreement. Maintain appropriately filed and documented records of; meetings and decisions, Trading Documents (bills of lading and invoices), insurance details, design information, quality control records, measurement and payment records and conditions and events affecting the contract: so to allow independent scrutiny or audit.

### b. Variations

Variations where necessary, are to be implemented in accordance with Division 8 of Part 13 of this Manual.

### c. Quality Control

Maintain records of the quality of the works/goods/services provided and note either acceptance, rejection or rectification measures taken.

### d. Measurement and Payment

To use means of measurement which is acceptable to the Contractor and GoPNG, as stated in the contract. All payments made must comply with the relevant sections of the Public Finance Management Act, Regulations and Financial Instructions.

### e. Financial Control

Maintain adequate financial records of payments including variations. Notify the relevant Executing Authority if contract value is to exceed the

delegate authority for the Department to approve variations, in accordance with Division 8 of Part 13 of this Manual.

f. **Project Completion**

Upon physical and financial completion of the contract, advise the relevant Supply and Tenders Board that the contract is successfully completed, and the total amount of monies spent on the contract.

**27. Suspension of Contract:**

If allowed for in the Contract Agreement, the Contract Manager can suspend the contract if either the Contractor or the Government of Papua New Guinea substantially fails to perform their obligations. Refer to the Contract Administration Manual for detailed information on the process of contract suspension.

**28. Termination of Contract:**

Contract termination processes should only begin after all reasonable actions to end a dispute have been explored, and formal legal and other advice has been sought. Only the Chairman of a Supply and Tenders Board, or Head of State can terminate a contract in accordance with their powers to execute contracts.



## DIVISION 8 – CONTRACT VARIATION AND TERMINATION

### 29. Contract Variation:

Section 32 (2) of the Public Finances Management Act enables designated officers to approve variations to contract as regards time, price, or other conditions within such limits as are specified in the Financial Instructions.

30. For major procurements (costing more than K100,000) the following will apply:

Nature of Change	Limits	Designated Approval Officer	Form of Approval	Additional Requirements
<b><u>Price Changes</u></b>	Where the price change is <b>less than a 10 % increase</b> from the originally approved price **	Departmental Head	In writing, with justification attached	Once approved such changes must be reported to the relevant Supply and Tenders Board within 5 days of the approval.
	Where the price change is <b>greater than a 10 % increase</b> from the originally approved price **	Original Contracting Authority (normally the relevant Supply Tender Board, or Head of State)	Written approval, with justification attached	
<b><u>Changes to Scope or Specification or timing</u></b>	Where the changes <b>do not materially effect the goods, works or services</b> provided	Departmental Head	In writing, with justification attached	Changes to scope or specification must be filed with the contract file and be available for independent audit.

	Where the changes <b>materially effect the goods, works or services</b> provided	Original Contracting Authority (normally the relevant Supply Tender Board, or Head of State)	Written approval, with justification attached	
--	--	--	---	--

**\*\* 1.** Where more than one price change occurs in relation to a contract the cumulative (total) of all the price changes must be less than a 10 % increase from the originally approved price, for the Departmental Head to be able to approve the variation.

**\*\* 2.** In all instances the Section 32 Officer must also confirm that financial authority is available to vary the contract. This is in addition to the above requirements.

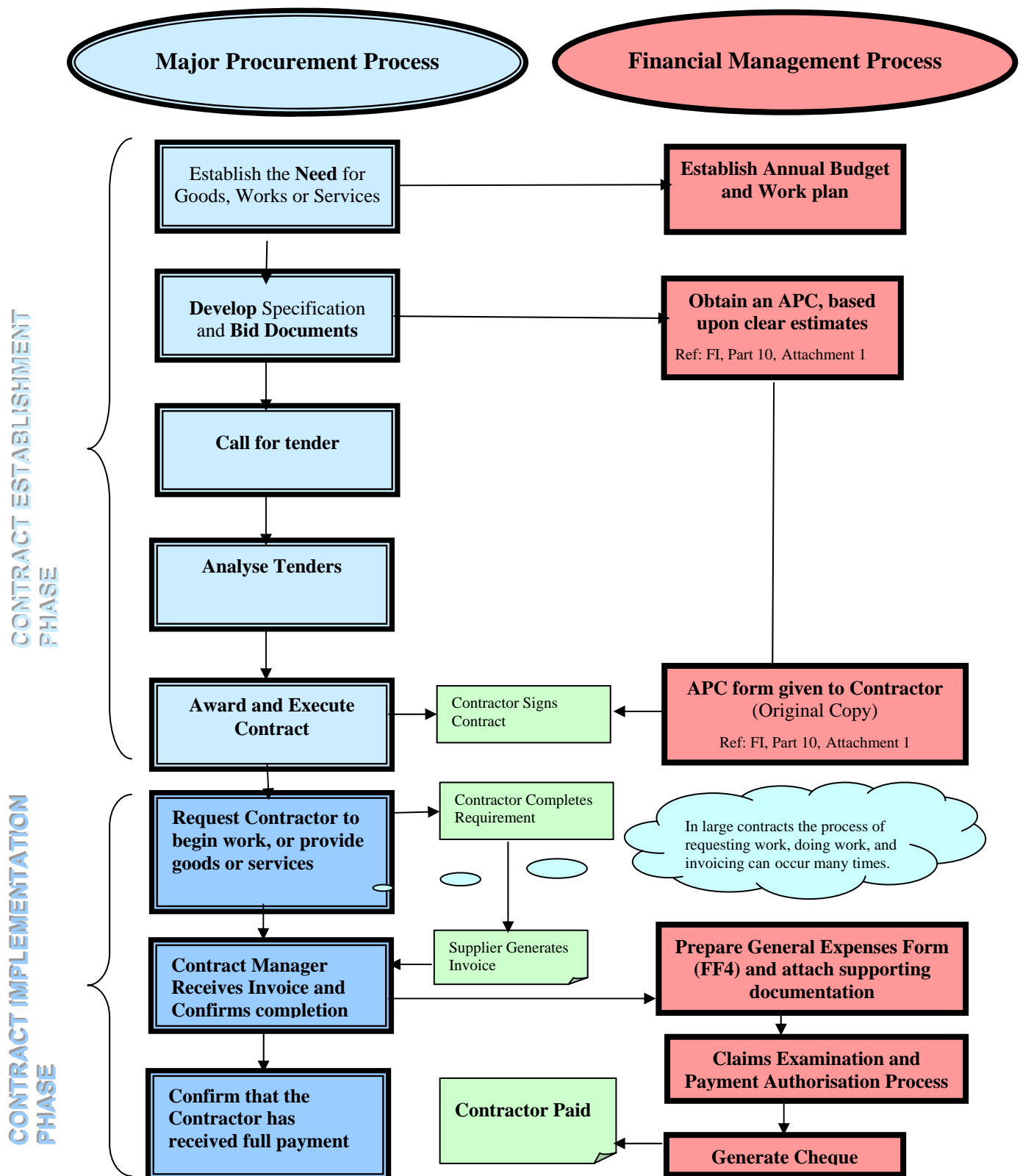
### 31. Contract Termination:

From time to time it may be necessary to terminate a contract before it reaches its natural conclusion. The following rules apply in relation to contract terminations:

- a. Contracts can only be terminated by the authority that executed the contract. (For major contracts this will normally be the relevant Chairman of the Supply and Tenders Board or the Head of State.)
- b. Written legal opinion from the State Solicitor **MUST** be sought prior to terminating a contract.
- c. Prior to the Chairman of a Supply and Tenders Board terminating a contract, the Supply and Tenders Board must meet and decide to terminate the contract.
- d. Where the Head of State is required to terminate the contract, he may only do so on written advice from the National Executive Council, supported by written advice from the relevant Supply and Tenders Board and State Solicitor.
- e. The authority terminating the contract must immediately notify the Department of Finance, Expenditure and Cash Management Division, APC Secretariat in writing of the termination.

## DIVISION 9 – PROCUREMENT PROCESS AND THE FINANCIAL MANAGEMENT PROCESS

32. The major procurement process parallels the financial management process. This interaction is outlined in the diagram below.



**DIVISION 10 – AUTHORITY TO PRE-COMMIT PROCESS****33. Introduction:**

The Authority to Pre-Commit (APC) process has been introduced to bring under control the problem of 'arrears.' The legislation within the PFMA relating to the APC process is contained within Sections 47B, 47C, and 47D. The amendments aim to achieve this by limiting the validity of contracts with the government to:

34. Those that are authorised by a PGAS generated Integrated Local Purchase Order Claim (ILPOC) (Form 4A) [The national Department of Works shall continue using its ORACLE based computer generated ILPOC], i.e. where funds are available in the current year, or,
35. Where there is a need to commit expenditure in advance of funds becoming available, those that are authorised by the Secretary for Finance as evidenced by his signature on an Authority to Pre Commit (Finance Form 5A).

The amendments provided that unless contracts with government are supported by one of these two forms of authority, those contracts will be null and void and will not be enforceable against the Government.

**36. Purpose:**

The purpose of the APC process is to ensure proper accounting, management and reporting on the Pre-Commitment of Expenditure is maintained in all levels of the National, Provincial and Local-Level Governments.

**37. Application:**

37.1 Those agencies and Commercial Statutory Authorities that are classed as trading enterprises are exempted from these amendments and this Financial Instruction (unless their Act specifically binds them to the PFMA). Though any agency that requires Section 61 approval under the PFMA will need to comply with the amendments and first obtain an APC. Should this say "binds" or "exempts"?

37.2 This APC process is effective from 1st March 2003, the same date that the amendments to the PFMA and Claims By and Against the State Act became effective.

**38. Relationship between the APC process and other Financial instructions dealing with procurement:**

38.1 The APC process is additional to other procurement requirements, and Supply and Tender Board requirements contained within the Financial Management Manual.

38.2 Departments, Provincial and Local Level Governments are reminded that the use of manual ILPOCs is illegal i.e. not allowed. Any Department or level of Government without a computer capable of producing PGAS generated ILPOCs will need to proceed to their nearest PGAS site to do this.

38.3 In situations where National Departments in the provinces do not have access through the PGAS system, they should contact their Departmental Heads to send their CFCs (ex-warrant) to the nearest Provincial Treasury Office to be down loaded into the PGAS system in order that PGAS generated ILPOCs and cheques can be raised.

**39. Arrears:**

In recent years some Departments and provinces have increasingly turned to the Finance and Treasury Departments to pay claims or invoices from suppliers because those Departments do not have sufficient funds to meet these claims.

40. These new provisions in the PFMA will make it clear that suppliers who provide goods or services without proper authority from the Government, i.e. without a purchase order (ILPOC) or contract (backed by an APC), will have no valid contract or claim against the Government.

**41. Responsibility of Departmental Heads:**

Departmental Heads are responsible for ensuring compliance with the new changes to the PFMA and these Financial Instructions. Failure to comply with these amendments could result in penalties and charges being imposed on Departmental Heads.

42. The Head of each spending Department or province must ensure that all pre commitments made by their own Department or province are included in the annual bids or estimates in the following year (and any subsequent years).

**43. Purchases, claims and contracts under K100,000:**

43.1 The Secretary for Finance will not approve an APC for amounts less than K100,000 (even though the amendments to the PFMA does make allowance for this). If there are insufficient funds available in a vote to make the purchase using an ILPOC in the current year, the relevant Department should make use of available capacity, or seek to have the purchase funded through Estimates for the following year. The relevant Department or province should not enter into a contract with a supplier if there are insufficient funds available. The relevant Department cannot anticipate that funds will be available in the following year (without an APC).

43.2 These are the cases that sections 47B, 47C and 47D are intended to eliminate, i.e. unauthorised officers ordering goods or services without an ILPOC when there are no funds or insufficient funds available. An ILPOC (Form 4A) is the only legitimate evidence that funds are immediately available in the current year. An APC (for amounts over K100,000) is the only legitimate evidence that funds will be made available later in the current year or in a following year. Officers who deal with suppliers and contractors without an ILPOC (Form 4A) or an APC are not acting on behalf of their Department or the Government. Suppliers and contractors cannot seek to be paid for any goods or services they have provided, where they did not first obtain an ILPOC (Form 4A) or an APC.

43.3 Departments are reminded that normal procurement procedures apply for amounts under K100,000. This includes obtaining three written quotes and the issuance of ILPOCs.

43.4 The only exemption to the above will be the use of an FF4 for purchases in genuine emergency situations up to a maximum amount of K300. Examples could include purchase of food for a large and unexpected police cell intake in a remote area. Fixing a dripping tap, purchase of stationery and other such examples cannot and do not constitute an emergency. This provision may not be used to substitute for poor planning and preparation by a Department.

## **42. APCs for contracts K100,000 and above:**

Where a Department wishes to enter into contracts for amounts of K100,000 or above, and there will be funds available to meet the schedule of payments under the contract (either in the current or subsequent financial years), that Department will be able to apply to the Secretary for Finance for an APC. It will be the Head of that Department's responsibility to ensure that funds are secured in subsequent years' estimates and appropriations through their budget negotiations with the Department of National Planning and Monitoring and with the Department of Treasury.

43. An application for an APC (see application form attached) should be completed by officials of the relevant Department, and signed by the Head of that Department. All relevant parts of the application form should be completed.

44. The APC must be applied for and obtained by the relevant spending Departments prior to inviting any tender including applying for any Certificate of Inexpediency (CoI). All other requirements of any relevant Supply and Tenders Board must be complied with after an APC has been obtained. An APC is not required for utility payments.

45. The application should be delivered to the First Assistant Secretary, Expenditure and Cash Management Division of Finance Department (marked for the attention of the Assistant Secretary, Expenditure), where it

will be registered. If the application form is not complete, the application will not be registered or accepted and will be returned to the relevant Department if such omissions are subsequently discovered.

46. The First Assistant Secretary, Expenditure and Cash Management Division will evaluate the application according to the criteria set out below. The results of this evaluation will then be considered at the weekly APC Committee meeting (chairman of which will be the First Assistant Secretary, Public Accounts). The committee will include heads of the relevant divisions of the Treasury Department and the Department of National Planning and Monitoring in order to jointly ascertain the merits of the APC request and the likelihood of funds becoming available to fund payments under the contract.
47. The First Assistant Secretary Expenditure and Cash Management Division (in his capacity as Chairman of the APC Committee) will then make recommendation to the Secretary for Finance as to whether an APC should be approved, together with a recommended maximum amount of pre commitment.
48. If approved by the Secretary, the First Assistant Secretary Expenditure and Cash Management Division will allocate an APC number, and the APC details will be entered into the register accordingly (see below). The APC will be in triplicate – white (original for the supplier / contractor); blue - Department of Finance copy and green - implementing department's copy.
49. For all APCs the Department of Finance will make and retain a photocopy of the APC form (the supplier / contractor has not been filled in at this stage). The entire APC form is then passed on to the nominated contact officer of the implementing Department. This officer will then make a photocopy of the form and forward the entire APC form, together with any requisition (FF3), to the relevant Supply and Tenders Board. The relevant Supply and Tenders Board will not proceed to tender or grant a COI unless an APC has first been obtained from and approved by the Secretary for Finance.
50. The relevant Supply and Tenders Board will write their file number on the original of the APC, and place their stamp and date over the top of that file number.
51. When a Notice of Successful Tender or COI has been issued by a Supply and Tenders Board, the relevant Supply and Tenders Board will fill in the contractor / supplier to whom the contract has been awarded. The relevant Supply and Tenders board will make and retain a photocopy of the APC and return the blue copy to the Department of Finance, and the original (white) and implementing Department copy (green) to the nominated contact officer on the APC. The nominated contact officer will then forward the original APC to the selected supplier or contractor.
52. Any remaining contractual documentation may then be finalised with the supplier or contractor. It is the supplier's or contractor's responsibility to

retain the original of the APC. Without the original, the supplier or contractor will not be able to demonstrate that they have a valid enforceable contract with GoPNG should any disputes subsequently arise.

53. Neither the First Assistant Secretary (PAD) nor his officers will discuss any aspect of applications or approvals or progress with suppliers or contractors. Only the relevant Head of Department or the contact officer nominated on the application may contact the First Assistant Secretary to discuss the progress of applications.
54. For all proposed contracts requiring an APC, the APC is not valid unless it has an APC Number that matches the APC number entered in the Register held by the Department of Finance. The APC is also not valid unless it has a relevant Supply and Tenders Board file number, stamped by the relevant Supply and Tenders Board, and matching the file number for that contract held by that Supply and Tenders Board.
55. An APC does not need to be obtained in respect of expenditure or contracts that are 100% donor funded. An APC will however be required for any contract that will involve Government counterpart contributions and that would normally require tender procedures to be undertaken. The APC would be issued for the full amount but the separation between Government contribution (cash) and donor funds (non-cash) will need to be made clear on the new revised APC form (copy attached).
56. An APC is not required for cash transfers from one level of Government to another e.g. Grant transfers to Provincial Governments, Department of Education school subsidies, Department of Health transfers to NGOs and so forth. An APC is also not required for principal and interest payments for debt.
57. **Criteria used by Secretary in approving APCs:**
  - 59.1 In order to authorise a pre commitment the Secretary for Finance needs to be satisfied that the provisions of the PFMA have been complied with, and that funds will become available at a later time. The criteria used by the Secretary for Finance (and the APC Committee) in deciding whether to approve (endorse) an application for an APC will include:
  - 59.2 The likelihood of the contract being funded from warrants issued later in the current year or in a subsequent year's estimates and appropriations. In this respect, the Secretary will consult with Treasury Department, Department of National Planning and Monitoring and may consult any other agency.
  - 59.3 Whether all provisions of Part VII of the PFMA have been complied with in respect of the proposed contract.



- 59.4 Whether the application for the APC has been completed fully and correctly, and whether any required attachments are attached (this includes the covering letter from the Head of Department and the PGAS printout showing the current appropriation, warrants, commitments and expenditure).
- 59.5 Whether the Secretary believes that the Head of the Department or province applying for the APC is fully aware of the nature of the purchase or contract, and of the amounts that the Departmental Head is committing their Department or province and the Government to in future years.
- 59.6 Whether the Department / Division has commitments already in place that are not fully funded in the Department's / Division's Budget for the year, the APC request can be rejected and the relevant agency told to transfer funds to the underfunded vote e.g. a Department has an appropriation of K0.5 million for the purchase of cars and submits an APC request for their purchase. The Department however also has an ongoing road project that requires K0.8 million in this year but it has only K0.6 million in the Budget for the road project.
- 59.7 This request for an APC for the cars and any further APC requests would be rejected and the Department concerned told to shift K0.2 million to the road project appropriation. It may transfer the appropriation from the cars appropriation or from elsewhere in its Budget. Only once this has been done will the Department be allowed to resubmit its request for an APC for the vehicles and for other purposes. In summary: no new commitments will be allowed unless existing commitments are fully funded.

## **58. Period contracts and standing contracts:**

### **60.1 New period contracts and standing contracts**

- 60.1.1 From 1 March 2003, as various Departments seek to enter into new period contracts or standing contracts, e.g. for mess supplies, rations, pharmaceuticals, security services, property leases etc, the new provisions, in section 47B, 47C and 47D will need to be complied with, and the procedures set out above will need to be followed.

### **60.2 Validating existing period or supply contracts**

- 60.2.1 Section 47B is effective for contracts entered into or purported to have been entered into by or on behalf of the State on or after 1 March 2003. At that time there will be numerous existing period or supply contracts entered into on earlier dates that will require ongoing payment as services are supplied or goods are delivered. These include:

- Rental contracts or property leases
- Electricity supply contracts
- Telephone service contracts
- Water supply contracts
- Pharmaceutical supply contracts
- Mess supplies, rations etc

60.3 For ease of administration and consistent application of the new sections 47B, 47C and 47D to claims for payments from suppliers after 1 March 2003, the Secretary for Finance may issue APCs for contracts entered into prior to 1 March 2003. This will allow claims under valid pre commitment from 1 March 2003 contracts to be distinguished from other claims lodged by suppliers whose contracts were entered into after 1 March 2003, but who have no ILPOC and no APC. These latter claims will be rejected by government (see below).

60.4 Departments are required to provide a list of ongoing (i.e. that commenced prior to 1 March 2003) contractual commitments that exceed K100,000 to the Department of Finance / Provincial Treasury by 30 May 2003.

## **59. Register of APCs:**

61.1 The First Assistant Secretary, Expenditure and Cash Management Division of the Department of Finance and the Provincial Treasurer will maintain a register of applications for and approvals of APCs. The First Assistant Secretary will arrange for relevant parts of that register to be available in hard copy or electronic format to relevant line agencies and other central agencies. This will facilitate preparation of budget estimates by spending agencies and by central planning and budgeting agencies.

61.2 All Departments that are in receipt of APCs will be required to keep a register of the APCs applied for, awarded and expenditures made against these APCs.

61.3 In the event that the project or contract is to be completed in a short period and within the same year, all expenditures must be committed within the appropriation for that same financial year.

61.4 If the project or contract is ongoing, the relevant Departmental Head or Provincial Administrator must ensure that the contract must have its limitation and if it continues to the next financial year, the estimates for the project or contract must be appropriated for in the next financial year's budget.

61.5 The register will also enable Departments and provinces to check on the validity and authenticity of APCs attached to claims or invoices, prior to processing those claims or invoices.

61.6 Manual Registers will be maintained parallel to the spread sheets both in the Finance Department and Provincial Treasuries.

## **60. Provincial Government and LLG purchases and contracts:**

62.1 The Secretary for Finance will delegate the authority to approve APCs to Provincial Administrators. The Provincial Treasurer will perform the role of the Chairman of the APC Committee. Provincial Administrators will apply the same criteria as the Secretary for Finance in deciding whether to approve applications for APCs.

62.2 The Provincial Authority to Pre Commit Committee (PAPCC) that meets weekly (or when APCs are lodged) will consider APC requests that have been evaluated and endorsed by the Expenditure Accountant (who would have checked on funds availability and that the requested precommitment is, in the Budget for the Province). If the APC Committee approves, it will then make recommendations to the Administrator for his final approval and signature.

62.3 The Provincial Authority to Pre Commit Committee (PAPCC) will comprise of the following:-

- Provincial Treasurer                - Chairman
- D/Administrator Economics- D/Chairman
- Provincial Legal Officer        - Member
- Provincial Budget Officer    - Member
- Provincial Planner               - Member

62.4 If an APC request comes through that is not in the Budget for the current year it will need the support of the Joint District Planning and Budgetary Committee (JDPBC). Appropriation will also have to be transferred to the new vote prior to endorsement from the Provincial Treasurer.

62.5 Provincial Governments will be limited to issuing APC commitments for future years up to a maximum level of 10 per cent of their current non-salaries and wages Budget (this includes National Government grants, internally generated revenue and VAT flows to the provinces). E.g. Current total Budget for the Province (excluding salaries and wages) is K20.0 million. In this example, APC commitments running into the following year can only be issued up to a maximum level of K2.0 million. Any levels above this limit will need to be endorsed by the national APC Committee and approved by the Secretary for Finance.

- 62.6 In addition to the above, the limit for endorsement at the Provincial level for APCs is K3.0 million - the same as that currently set for tenders. Any single APC request that exceeds K3.0 million will need to be submitted to the National Department of Finance for its consideration.
- 62.7 Where there are National and Provincial contributions to a project, these will need to be separated out clearly on the revised APC form. Any project that has both Provincial and National funding contributions will need to be submitted to the National Department of Finance for approval (and not the Provincial Government).
- 62.8 The amendments to the law and these Financial Instructions cover all expenditures and commitments of the Provincial Government and LLG - whether the funds used are sourced in the Province, LLG or from grants from the National Government.
- 62.9 Provincial Treasurers will maintain a similar register to that maintained by the First Assistant Secretary (PAD) for national departmental contracts, and will use the same APC form.

## **61. Reporting**

- 63.1 All Departments / Divisions that have been granted APCs must provide quarterly reports to the Department of Finance (FAS Public Accounts) / Provincial Treasury by the 11th of the month following the end of each quarter.
- 63.2 Failure to produce these reports will result in a cessation of approvals for APCs in the future (until any outstanding reports have been submitted).
- 63.3 The Provincial Treasurers must furnish their reports to Expenditure and Cash Management Division on Provincial APCs by the 22nd of the month following the end of every quarter.
- 63.4 The format for reporting is attached to this Financial Instruction.


## **62. Forms**

- 64.1 Departments or provinces seeking an APC on behalf of suppliers and contractors are required to complete the application form supplied by the Department of Finance. This is an approved Finance Form 5A that is required for all contracts and purchases over K100,000. Amongst other details this application form will require:
- Name of Department
  - Name of contact officer and contact details

- Name of the supplier or contractor, and the business address of the supplier or contractor (entered by the relevant Supply and Tenders Board after the tender has been awarded)
- Total value of contract, amount funded in current year, and amount to be pre committed against the following year(s) appropriation
- An accurate description of the goods or services to be supplied under the contract
- The vote number against which the department anticipates that funds will be made available at some future time
- Signature of Head of Department (or Acting Head of Department) and the date signed.

**Authority to Pre Commit (APC)**

Finance Form 5A

Name of Department / Division*:		APC ONLY FOR AMOUNTS OVER K100,000		Serial no:	
Vote number:.....		Name of Department contact officer: .....			
		Designation: .....			
Description of the goods or services:.....		Contact Phone number:.....			
		Contact Fax number:.....			
		Contact e-mail address:.....			
	CASH			NON-CASH	
	National Government	Provincial Government	Local level Gov't	Donor / loan	TOTAL
Current (revised) appropriation	K	K	K	K	K
1. Estimated pre commitments in current year	K				
2. Estimated pre commitments in current year +1	K				
3. Estimated pre commitments in current year +2	K				
4. Estimated pre commitments in other years	K				
<b>Total contract value</b> (sum of 1 to 4):	K				
I certify that all of the provisions of Part VII of the Public Finance Management Act have been complied with in respect of this proposed purchase or supply. I also certify that my Department will include the amount of this precommitment in its estimates for future years					
Signed by the Head of Department / Division*.....Print name.....on ..../.../..... (date)					

**Section below only to be filled out by Department of Finance / Provincial Treasury**

1. Request entered into register in Department of Finance / Provincial Treasury on ..../.../..... by (print name) .....(signature).....	2. Request endorsed by Chairman APC Committee / Provincial Treasurer on ..../.../..... (signature).....
3. Approved by Secretary for Finance / Provincial Administrator (signature).....on ..../.../.....	<b>Maximum precommitment authorised K</b>
<b>APC No Allocated:</b>	

**Section below only to be filled out by the relevant Supply and Tenders Board**

Name of supplier:.....Supply and tender board file number.....	
Business address of supplier (not Box number):.....	
Approved by the Chairman of the relevant Supply and Tenders Board on ..../.../.....	
Signature.....	Print name.....Tenders board stamp:

\* Department is at the National level, Division at the Provincial Government level

- Note:
1. This Authority to Pre Commit form does not become active until it has been registered and the APC No. has been allocated by the Dept of Finance / Provincial Treasury
  2. This Authority to Pre Commit is not valid until a Supply & Tenders Board file number is allocated
  3. All APC applications must be accompanied by a current PGAS printout and a covering letter providing reasons for and justifying the granting of an APC
  4. Suppliers should keep the original of this document in a safe place as proof of the validity of their contract with the Government

Distribution: White (original) - supplier; Green - implementing Department; Blue - Dept of Finance / Provincial Treasury; Bookfast - implementing Department.