



REPUBLIC OF NAURU

**Public Finance (Control and Management)
(Amendment) Bill 2012**

Serial No. 19 of 2012

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**Public Finance (Control and Management)
(Amendment) Bill 2012**

Serial No. 19 of 2012

A Bill for:

An Act to amend the *Public Finance (Control and Management) Act 1997*

Certified on ...

Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Public Finance (Control and Management) (Amendment) Act 2012*.

2 Commencement

This Act commences on a date fixed by the Minister by Gazette notice.

3 Act amended

The Schedule amends the *Public Finance (Control and Management) Act 1997*.

**SCHEDULE – AMENDMENT OF PUBLIC FINANCE
(CONTROL AND MANAGEMENT) ACT 1997**

section 3

[1] Renumbering of Part headings

Renumber the Part headings so that Arabic numerals are used rather than Roman numerals.

[2] Amendment of section 2 (Interpretation)

Section 2(1), definition of '*Head of the Department*'

omit

Public Service Act

substitute

Public Service Act 1998

[3] Amendment of section 3 (Application)

Section 3

after its present contents (now to be designated as subsection (1) insert

(2) Nothing in subsection (1) limits the application of Part 3A.

[4] Insertion of Part 3A

After section 15

insert

PART 3A – PROCUREMENT

15A Object

- (1) The object of this Part is to advance government priorities and objectives by a system of procurement for public authorities directed towards:
 - (a) obtaining value in the expenditure of public money; and
 - (b) providing for ethical and fair treatment of participants; and
 - (c) ensuring probity, accountability and transparency in procurement operations.
- (2) The Minister and the procurement agent must, in administering this Part, have regard to and seek to further the object of this Part.

15B Interpretation

In this Part:

'conduct' includes arrange the conduct of and **'conducted by'** includes arranged through;

'procurement agent', see section 15C;

'procurement manual', see section 15D;

'procurement operations' of a public authority means:

- (a) the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of intellectual property and the procurement of construction works; or
- (b) the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or
- (c) the management of the authority's contracts for services;

but does not include operations excluded from this definition by the Regulations;

'public authority' means:

- (a) a Minister; or
- (b) a Department; or
- (c) a government instrumentality or State owned enterprise, including:
 - (i) Nauru Rehabilitation Corporation; and
 - (ii) RONPHOS; and
 - (iii) Nauru Utilities Corporation; and
 - (iv) Nauru Air Corporation; and
 - (v) Egigu Holdings Corporation; and
 - (vi) Nauru Agency Corporation;but not including an instrumentality or enterprise declared by the Regulations not to be a public authority; or
- (d) a person declared by the Regulations to be a public authority.

15C Procurement agent

- (1) The Republic may engage a procurement agent with the function of conducting procurement operations on behalf of public authorities as required or contemplated by this Act.
- (2) The agent must be selected following a competitive tendering process conducted jointly by:
 - (a) the Chief Secretary; and
 - (b) the Secretary for Finance; and
 - (c) one other person (who is not a public officer) nominated by Cabinet.
- (3) The agent must be independent of the Government of Nauru.
- (4) A person selected to be the agent following the competitive tendering process may be engaged for a period not exceeding 5 years.

- (5) A person may be engaged as the agent for a further period or periods not exceeding 5 years without a further competitive tendering process if the Secretary for Finance is satisfied that the agent has met the performance criteria specified in the agent's contract for the previous period of engagement and Cabinet approves the engagement of the agent.
- (6) However, a competitive tendering process for the selection of an agent must be conducted as set out in subsection (2) at least once in each 10 year period (and, consequently, a person may not be engaged as the agent for an aggregate period that exceeds 10 years unless that person has been selected at subsequent competitive tendering processes).
- (7) The agent's contract of engagement:
 - (a) must require procurement operations to be conducted on behalf of public authorities in accordance with this Act; and
 - (b) must set out standard terms under which the agent will conduct procurement operations on behalf of a public authority at the request of the public authority; and
 - (c) must require the agent to provide reports to Cabinet and to each public authority relating to the conduct of procurement operations; and
 - (d) must require at least 1 representative of the agent to be a resident of Nauru at all times during the term of the contract; and
 - (e) must contain provisions designed to enhance the skills of the employees of public authorities in relation to procurement operations, including through training to be provided by the agent; and
 - (f) may contain any other provisions.

15D Procurement manual

- (1) The Secretary for Finance is responsible for:
 - (a) the preparation of a procurement manual governing procurement operations of public authorities; and
 - (b) the regular review of the manual and its modification or substitution as required; and
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- (c) the publication of the manual in up-to-date form (including on a government website).
- (2) The procurement manual must comply with any requirements set out in the Regulations and must be approved by Cabinet.

15E Conduct of procurement operations of public authorities

- (1) Procurement operations of a public authority must be conducted in accordance with the Regulations and the procurement manual.
- (2) The Regulations may (without limitation):
 - (a) require procurement operations of a public authority to be conducted by the procurement agent; and
 - (b) leave matters to be determined according to the discretion of the Minister, the Secretary for Finance or the procurement agent.
- (3) Procurement operations of a public authority not required under the Regulations to be conducted by the procurement agent may be so conducted under an agreement between the authority and the agent as set out in the agent's contract.
- (4) A public authority must not artificially divide a procurement operation in order to avoid a requirement of the Regulations.
- (5) A public authority is excused from compliance with subsection (1) to the extent that compliance would be inconsistent with the terms of an agreement between the Republic of Nauru and a foreign government or an international or regional institution.
- (6) A public authority is excused from compliance with subsection (1):
 - (a) in circumstances of disaster, war or social unrest; or
 - (b) if the Secretary for Finance grants an approval to that effect.

[5] Amendment of section 17 (Write off)

Section 17 (2) and (3)

omit

properly

substitute

property

[6] Amendment of section 18 (Sale of public property)

Section 18(2)

omit

properly

substitute

property

[7] Amendment of section 32 (Regulations)

Section 32(2)

omit