

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

EXPLANATORY MEMORANDUM

OBJECTIVES

The *Public Finance (Control and Management) (Amendment) Bill 2012* establishes a legislative framework for a new procurement regime for public authorities.

EXPLANATION OF CLAUSES

Clauses 1 to 3 are formal provisions.

The **Schedule** contains the substantive amendments.

Item 1 is a drafting amendment to modernise the style of Part headings.

Item 2 is a drafting amendment updating a reference to the Public Service Act.

Item 3 ensures that the statement in section 3 does not have the effect of exempting State-owned enterprises or other government instrumentalities from the new Part in relation to public procurement. Section 3 provides “This Act applies to all public moneys, public property, income, expenditure, assets and liabilities of the Republic received held or disbursed whether within or outside Nauru, other than that the responsibility for and the supervision and control of which, is vested by the Constitution or any other written law in some other person or body.”

Item 4 inserts new Part 3A on Procurement.

PART 3A – PROCUREMENT

15A Object

This section sets out the object of the Part, being to advance government priorities and objectives by a system of procurement for public authorities directed towards:

- obtaining value in the expenditure of public money; and
- providing for ethical and fair treatment of participants; and
- ensuring probity, accountability and transparency in procurement operations.

The Minister and the procurement agent (a role established under the Part) must have regard to and seek to further this object.

15B Interpretation

This section sets out definitions for the purposes of the Part.

Procurement operations covers procurement of goods or services (including construction works) required by a public authority for its operations and the management of those goods and services.

Public authority means a Minister, a Department and a government instrumentality or State owned enterprise (unless excluded by regulation) and any other person declared by the regulations to be a public authority.

15C Procurement agent

This section provides for the appointment of a procurement agent. Selection is to be through a competitive tendering process conducted jointly by the Chief Secretary, the Secretary for Finance and one further external person nominated by Cabinet. The agent may be appointed for a period up to 5 years and may be reappointed if the agent meets performance criteria specified in the contract. However, a further competitive tendering process must be undertaken at least once in each 10 year period.

The section also sets out terms that must be included in the agent's contract of engagement, namely:

- must require procurement operations to be conducted on behalf of public authorities in accordance with the Act; and
- 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
- must require the agent to provide reports to Cabinet and to each public authority relating to the conduct of procurement operations; and
- 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
- 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
- may contain any other provisions.

15D Procurement manual

This section makes preparation, review and publication of a procurement manual a responsibility of the Secretary for Finance. The manual must be approved by Cabinet. The regulations may set out requirements for the manual.

15E Conduct of procurement operations of public authorities

This is the substantive provision requiring public authorities to conduct their procurement operations in accordance with both the regulations and the procurement manual.

The regulations will require certain procurement operations to be conducted by the procurement agent. Artificially dividing an operation up to avoid a requirement of the regulations is prohibited.

Even if there is no obligation to conduct procurement operations through the procurement agent, a public authority may do so on standard terms and conditions set out in the contract of engagement of the agent.

Compliance is not required if that would be inconsistent with an agreement between the Republic and a foreign government or international or regional institution. A public authority is also excused from compliance in circumstances of disaster, war or social unrest or if the Secretary for Finance grants approval to that effect.

Items 5 and 6 are drafting amendments that correct minor printing errors.

Item 7 removes an odd provision providing for a different mechanism for making regulations under this Act. The standard mechanism set out in the *Interpretation Act 2011* is to be used.