

Ombudsman Commission  
Of Papua New Guinea

AN INVESTIGATION INTO THE ALLEGED MISUSE AND  
MISAPPLICATION OF THE SERVICES IMPROVEMENT PROGRAM  
GRANTS BY MADANG THE JOINT PROVINCIAL PLANNING &  
BUDGET PRIORITY COMMITTEE TO PURCHASE 19 MOTOR  
VEHICLES FOR THE 19 LOCAL LEVEL GOVERNMENT PRESIDENTS  
IN MADANG PROVINCE

FINAL REPORT  
July 2018

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ABBREVIATIONS

APC	-	Authority to Pre-Commit
Commission	-	Ombudsman Commission of Papua New Guinea
CSTB	-	Central Supply & Tenders Board
DSIP	-	District Services Improvement Program
GoPNG	-	Government of Papua New Guinea
Hon.	-	Honourable
ILPOC	-	Integrated Local Purchase Order & Claim Form
JPP&BPC	-	Joint Planning and Budget Priority Committee
LLG	-	Local Level Government
LLGSIP	-	Local Level Government Services Improvement Program

MP	-	Member of Parliament
MPA	-	Madang Provincial Administration
NEC	-	National Executive Council
PEC	-	Provincial Executive Council
MPG	-	Madang Provincial Government
PSIP	-	Provincial Services Improvement Program
PSTB	-	Provincial Supply & Tenders Board
SIP	-	Services Improvement Program

Abbreviations

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## CHRONOLOGY OF EVENTS

2012

30 October In its Decision No.102/2012, the National Executive Council (NEC) directed for the Service Improvement Program (SIP) Funds to be expended on Key Sectors:-(i) Infrastructure; (ii) Health; (iii) Law & Order; (iv) Economic & Agriculture; and (v) Administration.

2013

01 January Mr. Steven Gibson, then Secretary, Department of Finance, approved and issued Financial Instruction No.01/2013 for the implementation of the PSIP at the Provincial level, DSIP at the District level and LLGSIP at the LLG level.

Mr. Bernard Lange, then Provincial Administrator, Madang Province, by instrument, appointed Mr. Peter Torot as Financial Delegate and Section 24 and Section 32 Officer.

Mr. Paul Sai'i, then Secretary, Department of Implementation and Rural Development also approved and released the Department's PSIP, DSIP and LLGSIP Administrative Guidelines.

11 February The Madang Provincial Administration made a draft list of motor vehicles to buy from Ela Motors Ltd.

25 February Mr. Raymond Imanui, Sales Representative, Ela Motors Ltd provided a quotation No.230562 to Mr. Thomas Naruse within the Provincial Finance and Treasury Division for the purchase of 20 New Toyota Landcruiser 10 Seater Station Wagon, one New Toyota Landcruiser 5 Door Deluxe Wagon, one New Toyota Landcruiser 5 Door Wagon and one New Toyota Hilux 2.5 Turbo 4 Wheel Drive Double Cab Ute with the combined amount of K2,477,899.10.

Mr. Imanui sent another quotation No.230578 to Mr. John Bivi, within the Madang Provincial Mining Office, Madang Provincial Administration for one New Toyota Landcruiser 10 Seater Station Wagon and New Toyota Landcruiser Pick-Up 4.2 Wheel drive with a total cost of K236,172.53.

26 February Mr. Lange wrote to the Sales Manager, Ela Motors Ltd and enquired whether it was possible for the Provincial Administration to acquire 10 motor vehicles on first installment payment and the remaining as and when the payment is secured.

12 March Mr. Imanui sent another quotation No.233649 to Mr. Paul Ito Adam, within the Madang Provincial Administration for one New Toyota Landcruiser 5 Door Deluxe Wagon with total costing of K144,502.93.

13 March Mr. Imanui sent another quotation No.233804 to Mr. Lange for one New Toyota Landcruiser Prado and New Toyota Landcruiser Pick-Up 4.2 Wheel Drive with a total cost of K236,172.53.

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27 March The Office of the Governor for Madang Province raised the Requisition and General Expenditure Forms which were approved by Mr. Lange and corresponding Integrated Local Purchase Order & Claim (ILPOC) Forms. A cheque was raised and payment of K2,834,507.80 was made

respectively

to Ela Motors Ltd for the Madang Provincial Administration fleet.

14 April The National Parliament passed the amendments to Sections 39B and 47B

of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) raising

the financial ceiling for the PSTB from K100,000.00 to K300,000 and

Authority to Pre-Commit (APC) financial delegation to K100,000.00 from K50,000.00.

18 November In its Special Meeting No.35/2013, the NEC made several decisions one of

which was Decision No.414/2013. The decision was to enhance the SIP

Guidelines to clarify responsibilities in the Provincial Governments and the LLGs.

The Madang Provincial Government passed the Revenue & Expenditure

Estimates for the Year Ending 31 December 2014.

2014

16 January The Madang Provincial Government passed its Appropriation Act 2014. It was

certified on the same day by Mr. Lange.

31 January Mr. Augustine Dunstan, First Secretary to the Governor of Madang

Province, wrote to the Madang Provincial Treasurer and forwarded the

specimen signatures for Mr. Lange, Mr. Peter Pasum, Requisition Officer and himself to the Senior Examiner.

17 February Mr. Lange approved the Madang Provincial Administration Financial

Directive No.2/2014: Appointment of Authorized Requisition Officers,

Financial Delegates and Section 24 Officers for funding under 783 Series.

2 March The Madang Joint Provincial Planning and Budget Priority Committee

(JPP&BPC) in Resolution No.01/02/2014, of Meeting No. 01/2014, held in

the Governor's Office, approved the purchase of 19 motor vehicles for the 19 LLG Presidents.

6 March Mr. Lange approved the Madang Provincial Administration Financial

Directive No.1/2014: Appointment of Authorized Requisition Officers, Financial Delegates and Section 32 officers for funds under 283 series.

13 March Mr. Lange, as Section 32 Officer and Chief Accountable Officer, approved K1,968,612.61 to be paid to Ela Motors Ltd to purchase 19 motor vehicles for the 19 Local Level Government Presidents.

26 March Mr. Dunstan wrote to the Madang Provincial Treasurer and advised that Mr. Peter Pasum, Requisition Officer and himself were signatories to 783 and 283 Series of funded activities.

3 April Mr. Lange informed the Provincial Supply & Tenders Board (PSTB) members that their fifth meeting for 2014 was scheduled for 1:30pm Monday 7 April 2014.

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7 April The PSTB endorsed the JPP&BPC Decision to purchase 19 motor vehicles from Ela Motors Ltd as the only supplier for K2 million.

15 August The Provincial Treasury informed the Senior Examiner of the Authorised Requisition Officer's specimen signatures, which included the Acting Provincial Administrator (PSIP), but not including Mr. Augustine Dunstan.

4 February Mr. Lange approved the Madang Provincial Administration Financial Directive No.2/2014: Appointment of Authorized Requisition Officers, Financial Delegates and Section 30 Officers for funding under 783 Series.



## EXECUTIVE SUMMARY

### Overview

This is the Final Report of an Own Initiative investigation conducted by the Ombudsman Commission into the alleged improper decision by the Joint Provincial Planning and Budget Priority Committee (JPP&BPC) to divert funds intended for the upgrading and construction of road within the Province and alleged misapplication of K2,834,507.80 to purchase 19 motor vehicles for 19 Local Level Government (LLG) Presidents.

The following allegations were investigated:

1. That Hon. Jim Kas, then MP, Governor, as the Chairman of the JPP&BPC  
improperly convened a meeting that resolved to purchase 19 motor vehicles for the 19  
LLG Presidents.
2. That the JPP&BPC's decision to approve K2 million to purchase motor vehicles and  
then award Ela Motors Ltd the contract for the supply of the 19 motor vehicles, was  
wrong and improper.
3. That the Provincial Supply & Tenders Board (PSTB) did not follow the proper  
procurement process in awarding the contract to Ela Motors Ltd for the supply of 19  
motor vehicles.
4. That the Office of the Governor and the Provincial Treasury failed to comply with  
the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) when they  
processed the payment to Ela Motors Ltd for the supply of the 19 motor vehicles.

#### Principal Findings

1. In the opinion of the Ombudsman Commission, the Madang Provincial Government  
Appropriation Act 2014 was defective as it was developed contrary to the intent of the  
Constitution and contradicted the Organic Law on the Provincial Governments and Local Level  
Governments and the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013).
2. In the opinion of the Ombudsman Commission, the conduct of then Hon. Jim Kas,  
then MP, Governor, was wrong when he informed the JPP&BPC that he would fund  
the purchase of the motor vehicles for all LLG Presidents using the Governor's PSIP  
Grants.
3. In the opinion of the Ombudsman Commission, there was no proper quorum for the  
JPP&BPC to convene as its composition was not in compliance with Section 25(2) of  
the Organic Law on the Provincial Governments and Local Level Governments.
4. In the opinion of the Ombudsman Commission, the decision by the JPP&BPC to  
award the contract for the supply of the 19 motor vehicles to Ela Motors Ltd was

wrong.

5. In the opinion of the Ombudsman Commission, the appointment of Mr. Augustine Dunstan as First Secretary to the Governor and Financial Delegate was improper.
6. In the opinion of the Ombudsman Commission, the conduct of Mr. Augustine Dunstan, then First Secretary to the Governor, in signing the Request for Expenditure Forms and General Expenses Forms was wrong because he did not have the Financial Delegate.
7. In the opinion of the Ombudsman Commission, the Madang PSTB's decision to award the contract for the supply of 19 motor vehicles to Ela Motors Ltd was wrong because the payments were done to Ela Motors Ltd prior to the PSTB's meeting and decision.
8. In the opinion of the Ombudsman Commission, the decision by Mr. Bernard Lange, then Chairman of the Madang PSTB to award the contract for the supply of 19 motor vehicles to Ela Motors Ltd was wrong because the payments were done to Ela Motors Ltd prior to the PSTB's meeting and decision.
9. In the opinion of the Ombudsman Commission the conduct of Mr. Bernard Lange, then Acting Provincial Administrator was wrong when he failed to do due diligent checks on the Requisition for Expenditure Forms and General Expenses Forms that were filled on 13 March 2014 that enabled the processing of payment of K2,834,507.80 made to Ela Motors Ltd for the purchase of 19 motor vehicles.

### Irregularities

There were irregularities surrounding the expenditure of public funds and procurement of goods/services and the financial management process which included:

1. The Madang Provincial Government's Appropriation Act 2014 was defective.
2. Abuse of position by Hon. Jim Kas, then MP, Governor for Madang to exert political pressure and influence on the Provincial Administration and Provincial Treasury.

3. The failure to comply with Section 25(2) of the Organic Law on the Provincial Governments and Local Level Governments resulted in a JPP&BPC that lacked quorum making the decision to divert District SIP and LLG SIP funds from their original intentions to fund the purchasing of the 19 vehicles for the LLG Presidents.
4. The Provincial Administration failed to approach and request the Department of Implementation and Rural Development to conduct the tender and procurement process on its behalf, when there was no functional PSTB at that material time.
5. The improper appointment of Personal Staff for the Office of the Governor.
6. The improper delegation and abuse of financial powers by Officers.
7. The improper awarding of the contract for the purchase the 19 vehicles for the 19 LLG Presidents to Ela Motors Ltd.

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8. The improper payment for the purchase of 19 vehicles for the 19 LLG Presidents made to Ela Motors Ltd.
9. Lack of due diligence checks by the Provincial Administrator who is the Chief Accountable Officer and Section 32 Officer.

#### Recommendations

1. The Ombudsman Commission recommends that the Governor for Madang Province and the Provincial Administrator ensures that the Madang Provincial Government complies with the budgetary processes outlined in the Constitution, the Organic Law on the Provincial Governments and Local Level Governments and the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016) when developing the annual Appropriation Act for the province.
2. The Ombudsman Commission recommends that the Office of the Governor for

Madang Province must strictly comply with the Appropriation Act passed by the Provincial Assembly in that respective year and utilize the Provincial Service Improvement Program grants as outlined in the Appropriation Act.

3. The Ombudsman Commission recommends that the Provincial Government and the Provincial Administration must strictly comply with the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016), the NEC Decision No. 102/2012, Financial Instruction No.01/2013 and the Department of Implementation and Rural Development PSIP, DSIP, and LLGSIP Administrative Guidelines, when utilizing the Provincial Service Improvement Program grants as outlined in each Appropriation Act for that particular year.

4. The Ombudsman Commission recommends that all Joint Provincial Planning and Budget Priority Committee and District Development Authorities must strictly comply with Section 25(2) of the Organic Law on the Provincial Governments and Local Level Governments.

5. The Ombudsman Commission recommends that the Madang Joint Provincial Planning and Budget Priority Committee must strictly comply with Section 25(3) of the Organic Law on the Provincial Governments and Local Level Governments

6. The Ombudsman Commission recommends that the Office of the Governor for Madang Province must strictly comply with the Salary Remuneration Committee Determination Schedule G007-18 when making appointment of Personal Staff.

7. The Ombudsman Commission recommends that the Office of the Governor for Madang Province ensures that only Officers with financial delegations must endorse or approve any Finance Forms.

8. The Ombudsman Commission recommends that the Provincial Administrator ensures the Madang Provincial Administration must strictly comply with Section 40 of the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016), Financial Instructions

No.01/2013 and the Department of Implementation and Rural Development's PSIP, DSIP and LLSIP Administrative Guidelines in the event that there is a non-functional PSTB.

9. The Ombudsman Commission recommends that the Provincial Administrator ensures that Madang Provincial Administration must strictly comply with Sections 39B and 40 of the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016), Financial Instructions No.01/2013 and the Department of Implementation and Rural Development's PSIP, DSIP and LLSIP Administrative Guidelines when deciding to award a contract.

10. The Ombudsman Commission recommends that the Provincial Administrator ensures that Madang Provincial Administration must strictly comply with Section 47B of the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016) and Financial Instructions No.01/2013 when deciding to release funds to fund an activity.

11. The Ombudsman Commission recommends that the Provincial Administrator as the Chief Accountable Officer and Section 32 Officer must do due diligence checks on all Finance Forms prior to approving them.

## Conclusion

The Ombudsman Commission observed that then JPP&BPC acted wrongly when they made the decision to award the contract for the purchasing of 19 vehicles from Ela Motors Ltd for the 19 LLG Presidents. Furthermore, then Provincial Administration and the Provincial Treasury acted wrongly when they improperly facilitated the JPP&BPC decision to purchase the 19 vehicles.

The Provincial Administration and the Office of the Governor deliberately ignored the governing laws and regulations and proceeded with diverting of K2,834,507.80 and abusing their positions, authority, power and their respective offices to enforce the Governor's

policy decision to give 19 vehicles to the 19 LLG Presidents.

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## 1. JURISDICTION AND PURPOSE OF INVESTIGATION

### [1.1] INTRODUCTION

This is an Own Initiative Investigation by the Ombudsman Commission to establish whether or not there was any wrong conduct surrounding the alleged improper Joint Provincial Planning and Budget Priority Committee (JPP&BPC) decision to divert funds and misapply funds to purchase 19 motor vehicles for 19 Local Level Government (LLG) Presidents in Madang Province

The Notice of intention to investigate was issued under Section 17(1) of the Organic Law on the Ombudsman Commission to Mr. Daniel Aloï, then Acting Provincial Administrator for Madang on 7 July 2014 advising him of the Ombudsman Commission's intention to investigate this matter.

## [1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

Sections 218(b) and (c) of the Constitution state that two of the purposes for establishing the Ombudsman Commission are:

- to help in the improvement of the work of the governmental bodies and the elimination of unfairness and discrimination by them; and
- to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219(1)(a)(ii) of the Constitution empowers the Ombudsman Commission to investigate on its own initiative or on complaint by a person affected any conduct on the part of any governmental body or an officer or employee of a governmental body in the exercise of a power or function vested in it, him or her by law in cases where the conduct is or may be wrong, taking into account, amongst other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Schedule 1.2(1) defines –governmental body as:

- (a) the National Government; or
- (b) a provincial government; or
- (c) an arm, department, agency or instrumentality of the National Government or a provincial government;
- (d) a body set up by statute or administrative act for government or official purposes.

The Madang JPP&BPC, the Office of the Governor for Madang Province, Madang Provincial Administration and Madang PSTB are governmental bodies created by statute, namely the Organic Law on the Provincial Governments and Local Level Governments and the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013).

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The Ombudsman Commission therefore has jurisdiction to inquire into the question of



whether the JPP&BPC, the Provincial Administration, the Office of the Governor and the PSTB made an improper decision to award and make payments to the Supplier to supply 19 motor vehicles to the 19 LLG Presidents.

#### [1.3] PURPOSE OF THE INVESTIGATION

The purpose of this investigation is to determine whether any of the conduct under investigation was wrong and to determine whether any laws or administrative practices were defective in relation to the decision of the Governor for Madang Province, the JPP&BPC and then Provincial Administration.

#### [1.4] METHOD OF INQUIRY

The Ombudsman Commission issued a notice on 7 July 2014 under Section 17(1) of the Organic Law on the Ombudsman Commission to the Acting Provincial Administrator of Madang Province, advising of its intention to investigate the allegation.

Section 17(1) states:

Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.

The Ombudsman Commission obtained documents and other evidence from a number of sources and used its powers under Section 18 of the Organic Law on the Ombudsman Commission to require people to produce documents and information.

Section 18 states:

(1) Subject to the provisions of this Section and of Section 19, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.

#### [1.5] PEOPLE WHO GAVE EVIDENCE BEFORE THE OMBUDSMAN COMMISSION

The following people were called and gave evidence before the Ombudsman Commission:

No.	Name	Position	Date of Response
Interview			
1	Mr. Daniel Aloï	Acting Provincial Administrator	06 October 2015
2	Honorable Jim Kas, MP	Governor for Madang Province	17 November 2015
3	Mr. Simon Simoi	Provincial Planner	19 November 2015
4	Mr. Paul Amera	Provincial Treasurer	18 November 2015
5	Mr. Graham Pais	Provincial Budget Officer	18 November 2015
6	Mr. Peter Sagerom	Provincial Commerce Advisor	18 November 2015
7	Mr. Augustine Dunstan	First Secretary to the Governor	17 November 2015
8	Mr. Gabriel Saul	Former Provincial Treasurer	16 March 2017
9	Mr. Bernard Lange	Former Provincial Administrator	16 March 2017

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#### [1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON THE LEGALITY OF ADMINISTRATIVE CONDUCT

When the Ombudsman Commission conducts an investigation of this nature, it is not confined to reporting on whether breaches of the law have occurred. The constitutional mandate is much broader than this. The Ombudsman Commission is authorized to report on what, in its opinion, is wrong conduct, irrespective of whether that conduct was in accordance with the law.

#### [1.7] WHAT IS –WRONG CONDUCTII?

The Constitution gives some guidance to the Ombudsman Commission, when it is deciding whether administrative conduct is –wrongII.

Section 219(2) of the Constitution states:

Subject to Subsections (3), (4) and (5), and without otherwise

limiting the generality

of the expression, for the purposes of Subsection (1) (a) conduct is wrong if it is –

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
- (d) based wholly or partly on a mistake of law or of facts; or
- (e) conduct for which reasons should be given but were not, whether or not the act was supposed to be done in the exercise of deliberate judgment within the meaning of Section 62 (decisions in –deliberate judgment<sup>II</sup>).

The above list is not exhaustive. The phrase –and without otherwise limiting the generality of the expression<sup>II</sup> indicates that conduct which does not fit into any of the descriptions in paragraphs (a) to (e) may still be regarded as wrong. The Ombudsman Commission is entitled to regard conduct as wrong, even if the conduct does not appear in the list of descriptions given in Section 219(2) of the Constitution.

#### [1.8] THE PROVISIONAL REPORT

Whenever the Ombudsman Commission prepares a report of this nature, it has a duty to observe procedural fairness. Section 17(4) (b) of the Organic Law on the Ombudsman Commission imposes this duty.

Section 17(4) (b) states:  
Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that;

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(b) the Commission shall not make any comment in its

report that is adverse to  
or derogatory of any person without –

(i) providing him with reasonable opportunity to be  
heard; and

(ii) fairly setting out his defense in its report.

In order to discharge its duty of procedural fairness, the Ombudsman Commission distributed a Provisional Report of this investigation into the alleged improper purchase of 19 motor vehicles for the 19 LLG Presidents by the JPP&BPC in Madang Province.

Accompanying the Provisional Report was a direction dated 16 February 2017, pursuant to Section 21(1) of the Organic Law on the Ombudsman Commission, which all evidence, documents, papers and things referred to, including all findings and opinions, shall not be published without the consent in writing of the Ombudsman Commission. Breach of this direction is a criminal offence.

All persons who received the Provisional Report were given the opportunity to respond orally, and/or in writing, to the Ombudsman Commission's preliminary findings within 21 days upon receipt of the Provisional Report.

The following people were given copies of the Provisional Report and were invited to respond to the Ombudsman Commission's preliminary findings:

No	Name	Position
Date	Responses	
Issued	Received	
1. 16/2/2017	Hon. Governor Jim Kas 6/4/2017	Governor, Madang Province
2. 16/2/2017	Mr. Augustine Dunstan None	First Secretary to the Former Governor
3. 16/2/2017	Mr. Gabriel Saul 18/3/2017	Former Provincial Treasurer
4. 16/2/2017	Mr. Bernard Lange 3/4/2017	Former Provincial Administrator

The Ombudsman Commission has discharged its duty of procedural fairness and natural justice by giving the above persons the opportunity to respond to the Provisional Report within 21 days from the date of our letter.

In response to the Provisional Report issued to them, both Mr. Gabriel Saul and Mr. Bernard Lange responded. Their responses are outlined at paragraph [1.10] and [1.11].

[1.9] RESPONSE FROM HON. JIM KAS, THEN MP, GOVERNOR, MADANG PROVINCE

On 6 April 2017, Hon. Jim Kas, then MP, Governor for Madang Province responded and requested in seeking for extension of time.

The Ombudsman Commission granted then Hon. Governor an extension of 14 days, however he did not respond to the Section 17 (4) OLOC Report.

Therefore, the Ombudsman Commission's findings of facts and comments regarding then Hon. Governor for Madang Province in the Provisional Report have not changed.

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[1.10] RESPONSE FROM MR. GABRIEL SAUL FORMER PROVINCIAL TREASURER, MADANG PROVINCE

On 18 March 2017, Mr. Gabriel Saul, then Provincial Treasurer, Madang Province responded to the Ombudsman Commission's Provisional Report that was issued on 16 March 2017. Below is an extract of his response:

Dear Sir,

RE: INVESTIGATION INTO ALLEGED IMPROPER PURCHASE OF 19 VEHICLES FOR  
19 LLG PRESIDENTS IN MADANG PROVINCE

Reference is made to your 2014-AC-26760-500 dated 16th February 2017 which was hand delivered to me by Mr. Samuel MOANG and another officer at the Madang Provincial Administrator's Office on today, 16th March 2017.

Pursuant to Section 17 (4) of the Organic Law on the Ombudsman Commission, I hereby provide the following to correct certain adverse and derogatory

comments especially in regards to dates  
in which the alleged breach of laid down rules and regulation  
governing procurement occurred  
pertaining to the subject matter.

However, allow me to point out that, my engagement as Acting  
Provincial Treasurer for Madang  
Province under General Order 10 was at the whim of Governor Jim  
Kas from 24th March 2014  
until 24th March 2015 when he directed Secretary for Finance to  
terminate my contract because I  
raised questions about his First Assistant Secretary, the  
Project Management Unit (PMU) now  
the Ramu Development Foundation (RDF), Madang Development  
Corporation (MDC) and  
many others including Budgetary allocation for Madang  
Provincial Government's Internal  
Revenue (Appropriations under Division 783). (See Appendix \_A')

However, I was caught up in the 19 vehicles' surge when the  
public demanded explanation and  
provided a Press Release for the Governor in June 2014. (See  
Appendix \_B')

Having said that, my response hereunder would be in direct  
reference to certain comments and  
findings in the Provisional Report relating to me (Gabriel  
Saul) and the Office of the Provincial  
Treasurer commencing from... –Chronology of EventsII (pages v to  
vii, –Executive SummaryII  
(pages 1 to 2 and –Findings of FactsII (pages 7 to 46 of the  
Report).

#### 1. CHRONOLOGY OF EVENTS

~ 2014 31 January...I was not engaged as Acting Provincial  
Treasurer. (page vi)

- 2014 26 March...I had a running battle (paper war) with the  
Governor's First Secretary, Mr.  
Augustine Dunstan over his appointment as Financial Delegate  
(F/D) for PSIP and I even  
wrote to the Governor Jim Kas (see Appendix \_C')

- 2014 15 August...Mr. Dunstan was already removed as Financial  
Delegate for PSIP.

#### 1. EXECUTIVE SUMMARY. (Principal Findings)

- Point 6 (page 1)...not sighting as stated in the report, but  
signing of the General Expenses  
Form (FF4) by Mr Dunstan was in breach of Finance Instruction  
01/2013 dated 1/1/2013.

- Point 9 (page 1)...the amount stated here is K1,968,612.61 made to Ela Motors for the purchase of 19 vehicles. However, according to your Finding of Facts under paragraph 5 in page 19 the total payment is K2,834,507.80. (I may be wrong?)

## 2. FINDINGS OF FACTS

- PART 1. Paragraph 2.4 (page 19)

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The findings pertaining to transactions dated 27th March 2013 pointing out my involvement in raising two ILPOCs (FF4A) to draw cheque number 115230 for K2,834,507.80 to Ela Motors Madang to confirm the dates, especially the year because I was not engaged until 24/3/2014.

- PART 1. Paragraph 2.6 (page 20)

I was not engaged as Provincial Treasurer until 24th March 2014.

- PART 1. Paragraph 2.6 (Points 2 & 3 on page 25).

My explanations...all Service Improvement Program (SIP) funding throughout the Country is categorized or itemized under PGAS expenditure item 135 only. Provincial Treasurers' has no authority to change the approved Chart of Account (CoA) thus all purchases including purchase of vehicles, vessels, plant & equipment and other machineries are acquired using Item 135.

Further note that Function (FN) code number 2100 is NOT for the Deputy Provincial Administrator. Digit 2 indicates that it's a Project and figure 100 indicates that it is located within the provincial headquarter.

- PART 1. Paragraph 2.6 (page 27)

Third paragraph, the Provincial Administrator (PA) is NOT the Chief Accounting Officer he/she is the Chief Accountable Officer and Section 32 (1) Officer. Provincial Treasurer (PT) is the Chief Accounting Officer and Financial Delegate (Section 32 (4) Officer) for PSIP.

PSIP, DSIP & LLGSIP Financial limitations were determined by

Secretary Finance in Finance  
Instruction number 1/2013.

Financial Limitations determined by the Provincial Administrator are for Recurrent and Project Appropriations under Divisions 283 & 783 and for Local Level Governments (LLG) under Division 711.

- PART 1. Paragraph 2.6 (2nd paragraph page 28)

Allow me to clarify that the F/D (Section 32 (4)) certifies in the Requisition for Expenditure (FF3) that funds are available and if within his/her Limitations that claim (General Expenses Form FF4) can be processed for a cheque to be drawn without the Section 32(1) Officer's endorsement.

### 3. CONCLUDING REMARKS

With all due respect, I am of the honest opinion that the Provisional Report, February 2017 is half baked and misleading in some sense because it did not focus entirely on the purchase of 19 vehicles for the LLG Presidents but other purchases as well thus a layman digesting the report would be totally confused.

Sir, may I suggest that your Investigators also consult the Auditor General's Audit Management Letters for fiscal years ended 31st December 2013 and 2014 and furthermore obtain PSIP Acquittals provided to Office of Rural Development (ORD) now Department of Implementation Rural Development (DIRD) to tidy up your Report to the National Parliament.

I wish I was called upon to give evidence with others by the person that would have given realistic and documented evidence; Provincial Accountant Mrs Regina Rakua was also missed out.

Thank you.

(signed)  
GABRIEL F SAUL  
Former Madang Provincial Treasurer  
24/3/2014 to 24/3/2015

Comments



The Commission has noted both Mr. Saul's response and appreciates the comments made by Mr. Saul pertaining to this particular investigation.

However, the Commission's investigations are private and confidential and not subjected to directions from any person, organization or authority.

The Commission during its investigation called in responsible persons who were occupying their respective offices at that material time. Mr. Saul was no longer the Provincial Treasurer and he was not readily available to answer questions pertaining to the matter.

[1.11] RESPONSE FROM MR. BERNARD LANGE, THEN PROVINCIAL ADMINISTRATOR, MADANG PROVINCIAL ADMINISTRATION

On 03 April 2017, Mr. Bernard Lange, then Provincial Administrator, Madang Provincial Administration responded to the Ombudsman Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract of his response:

SUBJECT: INVESTIGATION INTO THE ALLEGED IMPROPER PURCHASE OF 19 MOTOR VEHICLE  
FOR THE 19 LOCAL LEVEL GOVERNMENT PRESIDENTS BY THE JOINT PROVINCIAL PLANNING & BUDGET PRIORITY COMMITTEE IN MADANG PROVINCE

I acknowledge your letter dated 16th February 2017, referenced: 2014-AC-26760-500.

The letter and Provincial Report of Investigation into the above mentioned subject matter was hand delivered to me by Mr. Samuel Moang at the Madang Star International Hotel on the 16th March, 2017.

I am given twenty (20) days, upon receipt of your letter to respond to the allegations, starting from the 16/03/17 and ending on the 07/04/2017.

I am providing my responses to the nine (9) days, upon receipt of your letter to respond to the allegations, starting from the 16/03/17 and ending on the 07/04/2017.

I am providing my responses to the nine (9) findings to the best of my ability and knowledge; in order to defend or admit the actions and/or decisions made during my term as the Provincial Administrator for Madang province.

My response to the nine (9) Findings:

3.1 In the opinion of the Ombudsman Commission, it appears that the Madang Provincial Government

Appropriation Act 2014 was defective as it was developed contrary to the intention of the Constitution and contradicted the Organic Law on Provincial Government and Local Level Government and the Public Finance (Management) Act 1995.

My Response: I totally disagree and categorically deny that Madang Provincial Government Appropriation Act 2014 was defective and developed contrary to the intent of the Constitution and the Organic Law on Provincial and Local Level Government and Public Finance (Management) Act 1995.

Appropriate Bills are made to guide and manage the passage of the budgets throughout the course of the year, particularly transfer and revisions of the funding through quarterly reviews. It makes the budget flexible to unforeseen events.

Your suggestion that the Appropriation Act is illegal is defamatory and malicious. It has been that way and in that form for long time without being criticized by either; the Auditor General's Office, the Provincial and Local Government, the National Economic and Fiscal Commission or the Department of Treasury.

3.2 In the opinion of the Ombudsman Commission, it appears that the conduct of the Hon. Jim Kas, MP, Governor, was wrong when he informed the JPP & BPC that he would fund the purchase of the motor vehicles for all LLG Presidents using the Governor's PSIP Grants.

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My response: Hon. Jim Kas, MP, Governor's conduct was made in the context of economy of costs and it was sensible and rational decision. Moreover, the Transport cost to Madang Provincial Government for the 19 Presidents to attend Assembly and Provincial Executive Council and Committee Meetings would be about K50,000 per President per year or K950,000. In 5 years it will cost K4,750,000. The Governor's decision would save the Government approximately K3,000,000.

Additionally, the Presidents' official duties must be perceived as; visiting their people in their respective wards, the vehicles were in various situations also used as ambulances and/

or vehicles to assist the sic or assist with health issues, assist the Police in law and order problems, and assist Public Servants in their various official duties, when vehicles of those sectors were not available to provide transportation for the public servants to deliver those various Government services to the people.

Furthermore, Transport Infrastructure component of the PSIP was the intended cost area against which the expenditure, being 20% of the total, K6.0m for the entire province.

3.3 In the opinion of the Ombudsman Commission, it appears that there was no proper quorum for the Joint Provincial Planning and Budget Priority Committee to convene as its composition was not in compliance with Section 25(2) of the Organic Law on the Provincial Government and Local Level Government.

My Response: That is very true, however, in my experience as the Provincial Administrator and Chief Advisor to three different Governors of Madang Province from 2010 – 2014. Former Governor Sir Arnold Amet from 2010 – 2011, former Governor and current Open Member for Raicoast Hon. James Gau, MP from 2011 – 2012 and current Governor Hon. Jim Kas, MP from 2012 – 2014, it was very difficult to have a full quorum (6 x Open Members) of the JPP & PBC Members.

5 x Open Members of Parliament hardly attended Provincial Assembly Meetings and JPP & BPC Meetings, despite being issued notices. Compliance with the Organic Law in that respect can never be satisfied for the entire term of Parliament.

3.4 In the opinion of the Ombudsman Commission, it appears that the decision by the JPP & BPC to award the contract for the supply of the 19 motor vehicles to Ela Motors Ltd was wrong.

My Response: I believe that decision was not wrong, because the Ela Motors Ltd is the only supplier of motor vehicles, with a workshop and genuine spare parts sales office in Madang Province. The 3 quote procurement requirement could not be strictly adhered to, because no other vehicle supplier is based in Madang, so going outside the province has limitations and costs that unnecessary.

The Madang Provincial Government and its administrative agencies rely on Ela Motors Limited as the sole supplier of genuine Toyota Products that are durable, long lasting and reliable. This practice is likely to continue over the years to come.

3.5 In the opinion of the Ombudsman Commission, it appears that the appointment of Mr. Augustine Dunstan as First Secretary to the Governor and Financial Delegate was improper.

My Response: I am unable to see any rationale for officers of the Governor not to be appointed as Financial Delegates. In my opinion; Financial Delegates are managers of Programs and Activities that are budgeted for a specific office in a Financial Year, and like other Sector Managers, the First Secretary (Mr Augustine Dunstan) administers, coordinates and manages the office of the Governor. Unless Ombudsman Commission can demonstrate the harm that such an appointment can cause to the management of finances in the province, I do not agree with your view.

Additionally, Appointing an Officer of the Secretariat as Financial Delegate/Fund Manager to Governor's Office and the JPP & BPC has had limitations, because they are not required to be presented in all programs and activities of the Governor's Office. It has created -bottle neck situations and impacted efficiency in the Governor's Office operations.

3.6 In the opinion of the Ombudsman Commission, it appears that the conduct of Mr. Augustine Dunstan, the First Secretary to the Governor, in sighting the Request for Expenditure form and General Expense Form was wrong because he did not have the Financial Delegate.

My Response: Ombudsman Commission opinion is not supported by factual legal provision of the law and therefore that opinion cannot be discussed.

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Moreover, the First Secretary to the Governor was appointed the Financial Delegate of Governor's Office Operating Funds; under the 783 Series and JPP & BPC Funds und 283 Series as per Financial Directive No:1/2014 and 2/2014; issued under my hand as Chief Accountable Officer. My power of delegation is vested under Section 100 of the PFMA.

3.7 In the opinion of the Ombudsman Commission, it appears that the Provincial Supply and Tenders Board's decision to award the contract for the supply of 19 motor vehicles to Ela Motors Ltd was wrong because the payments were done to Ela Motors Ltd prior to the PSTB's meeting and decision.

My Response: I admit that it was true that payment was done to Ela Motors Ltd prior to PSTB's meeting and decision. The main purpose for the meeting was to formalize the purchase done by the Office of the Governor for the 19 vehicle.

Additionally, Government funds were used for the purchase and the PSTB meeting was to ensure that the vehicles as being State properties; need to be recorded in our Asset Register for records purposes.

3.8 In the opinion of the Ombudsman Commission, it appears that Mr. Bernard Lange, the then Chairman of the Provincial Supply and Tenders Board's decision to award the contract for the supply of 19 motor vehicles to Ela Motors Ltd was wrong because the payments were done to Ela Motors Ltd prior to the PSTB's meeting and decision.

My Response: My decision as the Chairman of the PSTB was not wrong, because my committee's (PSTB) decision was to formalize the purchase already done by the officers of the Office of the Governor. This is also in reference to in my above (3.7) Response.

3.9 In the opinion of the Ombudsman Commission, it appears that the conduct of Mr. Bernard Lange, the then Acting Provincial Administrator was wrong when he failed to do due diligent checks on the Requisition for Expenditure forms and General Expenses forms that were filled on 13 March 2014 that enabled the processing of payment of K1, 968,612.61 made to Ela Motors Ltd for the purchase of 19 motor vehicles.

My Response: I was not acting as the Provincial Administrator; I was the then Provincial Administration. Due diligent checks were made prior to the Provincial Treasury Office processing the payment of K1,968, 612.61 made to Ela Motors Ltd for the purchase of 19 motor vehicles. Otherwise the payment would not have been processed, if diligent checks were not done properly.

## CONCLUSION

My responses must not be perceived as being defensive against your investigation and findings, but as a way forward in addressing some of the real life situations occurring in most of the Provincial Governments and its Administrations today. Let me highlight some of the following points to clarify my above responses.

1) Your opinion that Hon. Jim Kas MP, Governor of Madang and

Chairman of the JPP&BPC, made the decision to purchase 19 LLG vehicles was legally wrong, but I believe that decision to use Transport Infrastructure Component to purchase vehicle is an accepted practice throughout the country. Moreover, in 5 years it is expected to save K3.0m in Transport Cost by the Madang Provincial Government and the 19 local Level Governments,

2) It is my prerogative as the Chief Accountable Officer with powers vested in the PFMA, to appoint an officer as Financial Delegate/Fund Manager based on his/her position and assigned job description,

3) The Provincial Supply & Tenders Board approved the decision (purchasing of 19 motor vehicles for the LLG Presidents) in retrospect to the purchase because JPP&BPC is an institution of the Organic Law and it has equal responsibility to ensure that expenditure decisions are not extravagant and uneconomical. Moreover, the check and balance mechanism of the procurement process had already been passed, when the cheque was drawn. This (political) decision and its implementation) is clearly a case of the widely accepted procurement practice; that PSTB has little to no control over decisions made by political institutions and,

4) Ela Motors Limited is the sole supplier of Toyota products and residentially located in Madang Town.

I thank you for reading and accepting my responses.

Yours sincerely,

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(signed)  
Bernard Lange  
Former Provincial Administrator for Madang Province

Comments

The Commission noted Mr. Lange's response and inserted the respective responses with comments into the relevant sections in this Report.

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## 2. FINDINGS OF FACTS

## General

This chapter deals with the events leading up to the PSTB's decision on 7 April 2014 to award the contract for the supply of 19 motor vehicles for the 19 LLG Presidents in Madang Province. There were two separate purchases made by the Office of the Hon. Jim Kas, then MP, Governor of Madang Province. Therefore, this Chapter is laid out into parts: Part One will address what transpired and issues encountered in 2013. Part Two will address what also transpired and issues that arose in 2014.

### PART 1: MADANG PROVINCIAL ADMINISTRATION COMMITS TO PURCHASE VEHICLES IN 2013

#### [2.1] NATIONAL GOVERNMENT GRANTS

On 30 October 2012, the National Executive Council (NEC) made a Decision No.102/2012. The Decision issued directions for Service Improvement Program (SIP) and funding to be done on Key Sectorial Basis. That is, the SIP and its funds were to be based on Infrastructure; Health; Education; Law & Order; Economic & Agriculture and Administration. The Decision further approved the distribution of the SIP into percentages as follows:

1. Infrastructure	30%
2. Health	20%
3. Education	20%
4. Law & Justice	10%
5. Economic & Agriculture	10%
6. Administration	10%

The Decision further specified the 10% Administration allocation as follows:

1. General Administration (Support to JPP&BPC/JDP&BPC and Project Management Team (PMTs))	3%
2. Electoral (MP) Office Operational Support	3%
3. Project Mobilization costs	4%

#### Comments

The NEC Decision No.102/2012 was made in order for Government Grants to reach the people. These Government Grants are the Provincial Service



Improvement Program (PSIP), District Service Improvement Program (DSIP) and Local Level Government Service Improvement Program (LLGSIP), which are tied down to sectors and all project(s) are to be funded in compliance with the sector requirements. These measures are to allow funds to be channeled down to the LLG's where the majority of the population is located.

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Hence, the NEC approved for LLGs to be allocated K500,000.00 annually under the SIP for villages and Ward Developments. These development projects must be identified and categorized into one of the various sectors in order to qualify for funding from that particular sector.

Therefore, in this way the funds from the grants are distributed fairly and equally to all the development partners and the people get the maximum benefit of the Government's PSIP, DSIP and LLGSIP policy at the local level.

## [2.2] FINANCIAL INSTRUCTION No.01/2013

On 1 January 2013, Mr. Steven Gibson, then Secretary, Department of Finance, approved and issued Financial Instruction No.01/2013 for the implementation of the PSIP, at the Provincial level, DSIP at the District level and LLGSIP at the LLG level. The relevant section of the Financial Instruction is cited below:

### 4.0 PROGRAM IMPLEMENTATION PROCESS

#### 4.1 Project Identification and Selection

PSIP projects will be identified, selected and approved by the JPP&BPC with the

Governor as Chairman/Chairperson in a manner consistent with the respective Five

Year Rolling Development Plans of the Province and the Sectorial Key Priority areas

identified by the National Government.

4.2 DSIP projects will similarly be identified, selected and approved by the JDP&BPC

with the open Member of Parliament as Chairman/Chairperson. The selection must

also be consistent with the existing Five Year Rolling

Development plan for the District and the Sectorial Key Priority areas stipulated by the National Government.

#### 4.3 PSIP Projects & Plan

The selected project must be designed, documented and scoped, in consultation with Technical Team (DIRD Field Officers, Provincial Works Managers and other Sector Managers.

#### 4.4 Information on Projects to DIRD

Provinces and Districts through the respective Joint Planning and Budget Priorities Committee (JPP&BPC or JDP&BPC) as is applicable, are to submit lists of their prioritized Provincial and District projects together with duly completed PFDs to the DIRD to assist the Department with confirmation of consistency with policy, planning the provision of oversights and monitoring implementation.

#### 4.5 Project Budgets

The project budgets shall be derived from the PSI, DSIP and LLGSIP (Project Grants) as appropriated. Relocation of PSIP and DSIP funds to other projects shall not be permitted unless authorized by the Department of National Planning upon recommendation by DIRD upon an application to the effect.

### 5.0 PROCUREMENT

#### 5.1 Existing Procedures to Apply

The existing procurement procedures and public tendering requirements shall apply to all PSIP, DSIP and LLGSIP projects after the necessary selection by the JPP&BPC or JDP&BPC whichever is applicable.

#### 5.2 Minor Procurement Arrangements

Minor procurement, i.e., procurement below K5,000 shall be supported by three

verbal quotations but the particulars must be noted in a Register of Quotations to ensure that quotations have actually been obtained. The Particulars shall include date, time, name of suppliers and name of the quote giver and receiver.

Three quotations are required in writing for expenditures or purchases from K5,001 and below K500,000.

### 5.3 Major Procurement

All purchases above K500,000 shall require written quotations from suppliers upon an invitation to bid under open tenders as per Section 40 of the Public Finance (Management) Act 1995 either through the Provincial Supply & Tenders Board (PSTB) or the Central Supply & Tenders Board (CSTB) subject to the limit of financial authority of the board. For consideration of such tenders, submissions will need to be supported by duly approved Authority to Pre-Commit related (APCs).

### 5.4 The Requirement for APC

Failure to obtain a duly authorized and approved APC where one is required will negate the evaluation of the tender by the relevant Supply and Tenders Board. A contract purportedly entered into without the necessary APC signed by the Provincial Administrator is null and void for the intended purpose.

### 5.5 Waivers and Certificate of Inexpediencies

The Minister for Finance may, upon application to the effect, waive public tender requirement (not procurement procedures) for projects and/or contracts not exceeding K500,000 under Section 40(3) of the Public Finance (Management) Act 1995. The applicable circumstances must be noted accordingly in the application for the ministerial waiver, the Register and File.

A supply and tenders Board may, where it considers it inexpedient upon an application to the effect, issue a Certificate of Inexpediency, thus negating public tendering. This provision may however be cautiously applied

and other only in cases  
of natural calamities, emergency and where an –only supplier is concerned.

## 6.0 TECHNICAL EVALUATION FOR AWARD OF CONTRACTS

### 6.1 Technical Evaluation Committee

There shall be a Technical Evaluation Committee (TEC) for each Province and District comprising: A representative from Provincial Works Unit, the District Administrator and Provincial Planner to evaluate quotations or tender bids and recommend as follows:

#### TEC Recommendations

(i) All recommendations from the TEC for quotations below K500,000 to the Joint District Planning and Budget Priorities Committee (JDP&BPC) for evaluation, selection and award of contract.

(ii) All recommendations from the TEC for tender bids for projects of and over K500,000 to the PSTB through the Administrator for selection and award of contract.

(iii) The PSTB shall refer all intended contracts beyond its financial delegation of K5m to the CSTB for award and execution.

(iv) In any situation of doubt, the Provincial or District Treasurer is to advise on the requirements of the Public Finance (Management) Act 1995.

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### 6.2 Standard Contract

A standard contract prepared on behalf of the State shall be signed between the Chairman of the PSTB/CSTB on behalf of Government/State and the Contractor as is appropriate.

### 6.3 Lodgment of Project and Contract Documents with National Planning

A copy of the signed contract (including delivery schedules

and the billing or claims  
schedule) shall be furnished by the Provincial or District  
Administrator where  
appropriate, to the Department of National Planning and  
Monitoring, within one (1)  
week of the signing of the agreement.

## 7.0 RELEASE OF FUNDS

### 7.1 Quarterly Warrants

Total PSIP, DSIP and LLGSIP funding shall be controlled  
centrally through Warrant  
Authorities based on cash-flows and availability of cash-funds  
by Treasury and  
Finance Department.

Related cash disbursements shall be based on Quarterly  
Warrants and/or in  
accordance with Government directions on the matter.

### 7.2 Recording Warrants Received

Information on released PSIP, DSIP and LLGSIP funds shall be  
kept by the relevant  
Finance Office (Treasury) in the Province or District under  
the different  
components/projects of the program as depicted, reflected or  
displayed by the  
allocations and Chart of Accounts in the PGAS database.

### 7.3 CFCs and Delegations

The Provincial and/or District Administrator are responsible  
for the distribution of  
funds through CFCs, and for the related administration,  
accounting and reporting on  
the funds as distributed to projects under implementation.

## 8.0 PROCEDURE FOR CLAIM AND PAYMENT

### 8.1 Payments Generally

All payments out of the accounts holding PSIP, DSIP and LLGSIP  
funds shall comply  
with the issued Guidelines; this Finance Instruction and other  
requirements of the  
Public Finance (Management) Act 1995 where applicable.

### 8.2 Acceptance of Claims

Claims shall be accepted only upon certification by the  
Provincial Works Unit that  
the deliverables in question have been made and received as

per the terms and conditions of contract and schedules of payments/billings as provided in the Service or Supply Contract. Under no circumstances should forward payments be entertained or made.

### 8.3 Verification and Examination

All claims by Contractors for amounts between K5,000 and K500,000 submitted for payment shall be examined, verified and certified by the project manager in the Province or District and endorsed or approved for payment by the responsible Provincial or District Administrator using the payment schedules.

### 8.4 PGAS Processing and Recording

The Provincial or District Treasurer shall make all authorized payments to contractors and furnish payment reports to the JPP&BPC or JDP&BPC whichever is applicable through the Provincial or District Administrator using the payment schedules.

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### 8.5 Keeping of Accounts

The District Treasurer is to maintain proper accounts and records of financial transactions and assets acquired from DSIP, PSIP and LLGSIP funds in accordance with the Public Finance (Management) Act 1995 and the Organic Law on Provincial and Local Level Governments using the appropriate PGAS system.

### 8.6 Bank Reconciliations & Cheque Usage Reports

Cheque Usage Reports are to be provided regularly to Banks to support the cheque clearance processes. Provincial and District Treasurers will prepare Bank Reconciliations monthly and forward certified copies of such reconciliations and copies of the relevant bank balances to the Department of Finance within 14 working days each month end.

No manual cheque books are to be used in the disbursements funds and/or payments.

## 8.7 Asset Register

In addition to keeping records and accounts, the Provincial or District Administrators shall make sure that the Treasuries or Finance Accounting Offices keep up to date Asset Registers of fixed assets acquired through PSIP, DSIP and LLSIP development funds.

### Comments

This Financial Instruction No.01/2013 was issued under Section 117 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and it superseded all existing Financial Instructions before it. The financial instruction outlines how the PSIP, DSIP and LLSIP are to be used and what processes to follow in order for the grants to be accessed and payments made to the developer of the project.

In this case, the Madang Provincial Government, the JPP&BPC and the Provincial Administration did not comply with the Financial Instruction No. 01/2013 and the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013).

The Commission's investigation revealed that in 2014 Hon. Jim Kas, then MP, Governor made a political commitment that was not part of the Five Year Development Plan and that commitment was not factored in the 2014 Budget. However, since it was then Hon. Governor's commitment, the JPP&BPC and the Provincial Administration were made to divert and allocate funds to pay for the 19 motor vehicles.

The Commission noted that there was no evidence that Mr. Bernard Lange, then Provincial Administrator, Madang Province signed the Authority to Pre-Commit (APC) Form and authorizing the release of funds to be paid to the supplier Ela Motors Ltd.

### [2.3] PSIP, DSIP AND LLSIP ADMINISTRATIVE GUIDELINES

On 1 January 2013, Mr. Paul Sai'i, then Secretary, Department of Implementation and Rural Development also approved and released the Department's PSIP, DSIP and LLSIP Administrative Guidelines. The relevant section is cited below:

## Section 2 Purpose of PSIP, DSIP and LLGSIP Administrative Guidelines

2.1 The purpose of this Administrative Guidelines is to assist agencies involved in the implementation of the Provincial Services Improvement Program (PSIP), District Services Improvement Program (DSIP) and Local Level Government Service Improvement Program (LLGSIP) on the requirements they should meet in selecting,

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approving, procuring and implementing projects funded under the PSIP, DSIP and LLGSIP.

2.2 The Administrative Guidelines should be read in conjunction with the PSIP, DSIP and LLGSIP Financial Instructions No.01/2013 of 1 January 2013 by the Secretary for the Department of Finance.

2.3 All the provisions of the Financial Instructions referenced above are applicable in the use of these Guidelines.

## Section 3 Objective and Principles

### 3.1 Objectives of the PSIP, DSIP and LLGSIP

The primary objective of the PSIP, DSIP and LLGSIP is to provide minimum service delivery standards through re-establishment of basic infrastructure and facilities, including socio-economic activities for essential services such as health, education, law and justice, quality water and sanitation, transport (air, sea and land), communication and rural electrification.

### 3.2 Principles of the PSIP, DSIP and LLGSIP

The key principles of the PSIP, DSIP and LLGSIP are: greater ownership, affordability, value-adding, sustainability, leadership, and optimum resource utilization.

Underpinning the key principles is the Government's Policy of -Achieving National Equity in Development through the Strengthening of Basic Services Infrastructure.

The theme of the policy encapsulates the spirit of the PSIP, DSIP and LLGSIP and is directly related to the Ten Guiding Principles of the Medium Term Development Plan (MTDP 2010-2015), DSP (2010-2030) and Vision 2050.



The key features of PSIP, DSIP and LLGSIP are:

(a) Sweat Equity: Local communities are important partners of the PSIP, DSIP and LLGSIP therefore should participate directly in the implementation of the projects and programs.

(b) Driven by the Provincial Management Team (PMT) and District Management Team (DMT). PMT and DMT to manage the PSIP, DSIP and LLGSIP in their respective Provinces and Districts, ensuring that Provincial and Local Level Governments and Administrations can sustain and resource any future recurrent and development financing needs.

(c) Involvement by Members of Parliament and Presidents of Local Level Governments. Members of Parliament and Presidents of LLG provide Political Leadership and facilities initiatives to address funding and other (capacity, policy, etc.) gaps and constrains.

(d) Partnership among All Stakeholders. The program components will be delivered using existing systems and processes of the Government, encouraging public-private partnerships (PPP), agreements with development partners and other forms of external support aligned with Government's initiatives.

(e) Value for money. PSIP, DSIP and LLGSIP projects shall follow all required procurement procedures and ensure they receive good value for goods and services.

(f) Value added and Economies of scale: The focus shall be on impact projects, encouraging expansions of the value added chain, and on economies of scale.

#### Section 4 Sectoral Development Funds Allocation and Disbursement

4.6 Funding to Provinces, Districts and Local Level Governments aims to empower effective participation to diversify the economy and expand productive base, thereby improving livelihoods.

4.7 NEC Decision NG 102/2012 of 30 October 2012 directed the PSIP, DSIP and LLGSIP funds be broken down into the following six (6) sectors:

- 30% Infrastructure Services Support;
- 20% Health Services Improvement;
- 20% Education Services Support;
- 10% Law & Justice Services;
- 10% Economic Sector Support; and
- 10% Administration.

The NEC Decision approved the increase in current Administrative Fes from 3.0% up to 10.0% of the total Appropriation. This 10% is to be broken down into the following categories:

- 3% General Administration Component for Administration Support including Joint Provincial/District Planning and Budget Priority Committees (JPP&BPCs and JDP&BPCs) and Provincial Project Management Team (PPMT), District Project Management Team (DPMT);

- 3% Support Fund for travel and project and project identification and monitoring activities by the Chairperson of JPP&BPC, Chairperson of JDP&BPC and the LLG Council Chairperson or their delegates; and

- 4% Project Scoping and Mobilization Costs and related activities by PPMT, DPMT and PWU as defined in Project Identification Documents (PID), Project Formulation Documents (PFD) approved by JPP&BPC and JDP&BPC for scoping and implementation, respectively;

4.8 Disbursement of Funds is upon availability of Cash Flow Statement and funding on a quarterly basis.

4.9 Funds for PSIP, DSIP and LLGSIP may be moved from one priority section to another except for Administration component, provided that the following conditions are met:

- There must be JPP/JDP&BPC/LLG Council approval in line with 5 Year Development Plan;

- This/these must be justified in a letter to the Minister of Planning;

- Minister of Planning assesses and may/may not approve the submission in consultation with DIRD and DoF Secretaries.

Section 5 Project Identification, Selection and Approval at three (3) different Levels

### 5.3 Provincial Level

i) The JDP&BPCs in consultation with Provincial Administration Sectorial

Advisers and other interested parties identify projects and submit proposals through the Chairpersons of JDP&BPCs to JPP&BPC. Legitimate associations and individuals may also present their proposals directly to the PPMT, who will register and direct the proposals to the JPP&BPC.

ii) JPP&BPC selects and prioritizes proposals and submits the PIDs of prioritized proposals to PPMT or PWU for scoping and technical assistance up to the formulation of PFDs.

iii) The JPP&BPC is composed of the PEC member appointed by the Governor, as the Chairperson, all Chairpersons of the JDP&BPC (or nominees), Representatives of Church, Women and Youth.

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iv) The PPMT or PWU sends completed PFDs to JPP&BPC for review, endorsement and budget allocation for the approved projects.

v) JPP&BPC sends copy of approved projects and budget to Provincial Administrator, District Administrators, and DIRD.

5.4 The role of Provincial Project Management Team (PPMT), District Project

Management Team (DPMT) or Provincial Works Unit (PWU) shall be project scoping, documentation and appraisal in consultation with relevant provincial,

district and local level government sector advisors and national agencies; and provide technical advice to JPP/JDP&BPC and LLG Councils. Their scoping and mobilization expenses should be covered out of the 4% Mobilization and Scoping component prescribed in paragraph 4.2, for all PSIP, DSIP and LLGSIP PIDs they process.

5.5 PPMT shall comprise of the Provincial Administrator as Chairperson, Provincial Works Manager as Deputy Chairperson, Provincial Planner, Provincial Treasurer and appropriate sector advisors.

DPMT shall comprise of the District Administrator as Chairperson, District Engineer (cases where there is no District Engineer, then the Provincial Civil Engineer) as Deputy Chairperson, District Planner, District Treasurer and appropriate sector advisors.

5.6 In the event Department of Works (DoW) and other sector agencies are unable to assist in the scoping and documentation for new infrastructure, upgrade, maintenance and renovation of existing infrastructure, it could be outsourced in consultation with DIRD.

5.7 The relevant provincial, district and local level government sector advisors shall provide all technical oversight for the PSIP, DSIP and LLGSIP implementation.

5.8 All copies of Project Documentations and Contract Agreements shall be submitted by the Provincial and District Administrators to relevant national agencies consistent with the Financial Instructions for compliance.

## Section 6 Project Documentation Requirements

6.1 For projects valued up to K5,000 the requirements are the following;

- i) Letter of Request from proponents
- ii) Supporting letter from appropriate authorities
- iii) Project Formulation Document
- iv) Three verbal quotes

6.2 For projects valued above K5,000 and below K5,000,000

- i) Project Formulation Document
- ii) Three written quotes
- iii) Pro-Forma Contract Document
- iv) Other requirements as per relevant sectors

6.3 For Projects valued at K500,000 and K5,000,000

- i) Project Formulation Document
- ii) Minor/Major Contract Documents
- iii) Authority to Pre-Commit (APC)
- iv) Other requirements as per relevant sectors

6.4 For Projects valued at K5,000,000 and below K10,000,000.00

- i) Project Formulation Document
- ii) Major Contract Document
- iii) Authority to Pre-Commit (APC)
- iv) NEC Approval

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- v) Other requirements as per relevant sectors

Section 7 Procurement, Tendering and Selection Process

7.1 Procurement

7.1.3 Provincial Level

i) For procurements valued up to K5,000 three verbal quotations to be registered, are required for approval by Provincial Administrator.

ii) For procurements valued over K5,000 and below K500,000 three written quotation and pro-forma contract are required for approval by the Provincial Administrator.

iii) For procurements valued at K500,000 and below K5,000,000 an APC and a minor/major works contract are required for approval by PSTB.

iv) For procurements valued at K5,000,000 and below K10,000,000 an APC and a major contract are required for approval by CSTB.

v) For procurements valued at K10,000,000 and above, an APC, scrutiny by CSTB and a major contract are required for approval by NEC and forwarded to Governor General to execute.

vi) For non-functioning Provincial Supply and Tenders Board (PSTB).  
Procurements valued at K500,000 and below K5,000,000, all project and tender documents shall be referred to DIRD to facilitate, in consultation with relevant national government agencies and forward to Central Supply and Tenders Board (CSTB to tender and award).

## 7.2 Tendering and Selection

The Tendering and Selection Process takes place at three (3) levels:

### 7.2.3 Provincial Administrations

(i) The PPMT shall comprise of the Provincial Administrator as the Chairperson, Provincial Civil Engineer as Deputy Chairperson, Deputy Provincial Administrator-Field Services, Provincial Planner, affected District Administrators, and Provincial Treasurers or their nominees and appropriate sector advisors.

(ii) Districts and other interested parties will be supported by the Provincial Administrator to prepare PIDs for submission to PPMT or PWU.

(iii) The PPMT or PWU shall receive, register and undertake appraisal of submitted PIDs, assisting in the formulation of PFDs. PPMT or PWU shall access the 4% Scoping and Mobilization component of PSIP to carry out these duties.

(iv) The PPMT or PWU through the relevant provincial advisors shall prepare tender and contract documents, in coordination with PSTB and CSTB, where appropriate.

(v) For projects valued below K500,000 PPMT or PWU shall call for tender and award contracts on behalf of the JPP&BPC.

(vi) For projects valued at K500,000 and below K5,000,000 PPMT or PWU shall forward the prepared documents to PSTB to tender and award contracts and

the PSTB shall execute the contract on behalf of the State.

(vii) For projects valued at K5,000,000 and below K10,000,000 PPMT or PWU shall forward the prepared documents to CSTB to tender and award contracts.

(viii) DIRD to facilitate where required.

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Note: As a standard practice PPMT (provincial level) and DPMT (district and LLG levels) shall be engaged in the Tendering and Selection process. In cases where PPMT or DPMT is non-functional or non-existent, the PWU may be utilized.

#### 7.2.4 Non-Functional PSTB

Where PSTB is non-functional, project scope and documents including JPP&BPC and JDP&BPC Budget Resolution, PFDs and related project documents from relevant sector agencies, shall be submitted by Provincial Administrator and District Administrator to DIRD for appropriate action.

(i) The DIRD receives, registers and undertakes appraisal of PFDs approved under PSIP, DSIP and LLGSIP to ensure that submissions are complete and meet all compliance requirements.

(ii) A submission failing the appraisal shall be referred back to the relevant Provincial and District Administrators with appropriate recommendations, for corrections/and re-submission.

(iii) Where appropriate, a project submission passing the preliminary assessment criteria shall be recommended for the CSTB to tender.

(iv) At the close of the tender period, the DIRD and relevant agencies that are part of the Tenders Evaluation Committee (TEC), shall evaluate all responsive bids, and submit recommendations to the CSTB.

(v) The CSTB shall deliberate on the TEC's recommendations before awarding the

contracts.

(vi) The CSTB shall execute the contract on behalf of the State.

(vii) Terms of Reference and Composition of TEC:

- TOR

Registration  
o Evaluate Bids: compliance to relevant laws (IPA Documents, COC, and Insurance etc.), financial and technical capacity, business standing, company profile, bid amount.

- Composition

relevant  
o DIRD (Chair), DNPM, DoW, DoF, Treasury and other agencies depending on the sectorial nature of the project/s.

## Section 8 Payment Process

8.1 Provincial Administrators, Provincial Treasurers, District Administrators and District Treasurers and LLG Council Managers shall receive, register and evaluate all invoices and relevant payment documents and pay the Contracts and Service Providers progressively.

8.2 Details of payment should be recorded in DIRD Cheque Release Form and approved by the JPP&BPC/JDP&BPC Chairman or LLG Council President with respective Provincial Administrator, District Administrator and LLG Council Managers.

8.3 It is mandatory for the Provincial and the District Administrators as well as Provincial and District Treasurers to ensure that all projects, including those projects procured by PPMT and DPMT, PSTB and CSTB are implemented according to the conditions of the contract.

8.4 For every contract, 10% of the total contract value shall be retained according to the time period specified in the contract. If the Project Manager is not satisfied with the works done, especially in the case of the defaulting contractors, he/she can



recommend to the Provincial or District Administrators for the amount retained, to be forfeited to the State and returned to the Consolidated Revenue Fund (CRF).

#### Comments

The Commission's investigation revealed that Hon. Jim Kas, then MP, Governor, the JPP&BPC and the Madang Provincial Administration did not comply with the procedures outlined above.

In 2014, then Hon. Governor, made a political commitment to purchase motor vehicles for all 19 LLG Presidents in the Province. Then Hon. Governor gave evidence to the Ombudsman Commission under Oath on 17 November 2015 where he stated that:

—...The LLG Budgets were not yet refunded and considering the money that they had and vehicles that they were hiring I thought it was the best thing to do for them and that was to get vehicles for them. So I mean they were elected as mandated leaders so I thought it was best to get them vehicles and that was the basis on which I brought this idea up with JPP also I made a commitment whilst there on the LLG's during the swearing in that as the Governor I had to commit about K100,000.00 to each LLG so that amounted to about K1.9 million. Brought that idea to JDP and got JDP to have it resolved and thought it was best to buy vehicles for LLG Presidents basically to save costs...ll

Then Hon. Governor made the purchase of the 19 vehicles a priority and directed for funds to be made available. That is, the actions of the members of the JPP&BPC at that time were contrary to the set guidelines.

According to the Guidelines, the process is as follows:

The Provincial Project Management Team submits a completed PFD to the JPP&BPC for its endorsement. Once it is endorsed, then the funds are made available for implementation. In this case, the JPP&BPC awarded the supplies of the 19 vehicles to Ela Motors Ltd without

following the procurement process provided under Section 40(1)(b) of the Public Finance (Management)(Amendment) Act 1995 (No.4 of 2013), Clause 5.3 of the Financial Instruction No.01/2013 and Section 7 of the PSIP, DSIP and LLGSIP Administrative Guidelines.

In accordance with Section 7 of the PSIP, DSIP and LLGSIP Administrative Guidelines, the Madang Provincial Administration should have sent a copy of the JPP&BPC Decision to the Department of Implementation and Rural Development to facilitate the procurement process through the appropriate Supply and Tenders Board.

The Commission's investigation revealed that at the time the JPP&BPC awarded the contract to Ela Motors Ltd there was no functional PSTB to carry out the procurement process. Hence, in the absence of a PSTB, the JPP&BPC and the Madang Provincial Administration should have complied with Section 7.1.3(vi) of the PSIP, DSIP and LLGSIP Administrative Guidelines. That is, this particular project and tender documents should have been referred to Department of Implementation and Rural Development to facilitate, in consultation with relevant national government agencies. In the absence of a PSTB, the CSTB is requested to assist. This did not occur.

#### [2.4] PROVINCIAL ADMINISTRATION FACILITATES GOVERNOR'S REQUEST TO PURCHASE VEHICLES

On 1 January 2013, Mr. Bernard Lange, then Provincial Administrator, delegated his financial powers to Mr. Peter Torot, who was Acting Deputy Provincial Administrator, Community and Government Affairs. Mr. Torot had authority over Accounts 783 and 283, being LLG Accounts, District Treasury Operating Accounts and all other Accounts Expenditures in

accordance with the Cash Funds Certificates (CFC) not exceeding K3,000,000.00. The appointment as Financial Delegate was for the period 1 January to 31 December 2014. The Instrument of Appointment was accompanied with the specimen signatures of both Mr. Augustine Dunstan, First Secretary to the Governor and Mr. Thomas Warr, then Acting Administrative Officer.

On 11 February 2013, the Provincial Administration prepared a list requesting to purchase 28 motor vehicles to replace its fleet of vehicles. The list is outlined below:

No.	Office	Type of Vehicle	
Total			
1	Assembly Services	Ten Seater	1
2	Governor's Office	Ten Seater	2
3	Provincial Administrator's Office	5 Door	1
4	Information Office	5 Door	1
5	Provincial Executive Council	Ten Seater	9
6	Finance & Administration	Toyota Hilux	1
7	Finance & Administration	Ten Seater	1
8	Protocol (Madang)	Toyota Hilux	1
9	Deputy Provincial Administrator (CB)	Ten Seater	1
10	Deputy Provincial Administrator (CGA)	Ten Seater	1
11	LLG Support Services	Ten Seater	1
12	Lands Officer	Ten Seater	1
13	Education Office	Ten Seater	1
14	Deputy Governor's Office	Ten Seater	1
15	Commerce Office	Ten Seater	1
16	Works Office	Ten Seater	2
17	Mining	Ten Seater	1
18	Mining	Ute	1

On 25 February 2013, Mr. Raymond Imanui, Sales Representative, Ela Motors Ltd provided a quotation No.230562 to Mr. Thomas Naruse within the Provincial Finance and Treasury Division to purchase the following motor vehicles:

1.	20 x New Toyota Landcruiser 10 Seater Station Wagon		
	K2,118,000.00		
2.	1 x New Toyota Landcruiser 5 Door Deluxe Wagon		K
	136,990.70		
3.	1 x New Toyota Landcruiser 5 Door Wagon and		K
	127,921.20		
4.	1 x New Toyota Hilux 2.5 Turbo 4Wheel Drive Double Cab Ute		K
	94,987.20		
		Total:	
	K2,477,899.10.		

On even date, Mr. Imanui sent another quotation No.230578 to Mr. John Bivi within the

Madang Provincial Mining Office, Madang Provincial Administration  
for the following:

1. One New Toyota Landcruiser 10 Seater Station Wagon  
K118,487.64

2. One New Toyota Landcruiser Pick-Up 4.2 Wheel drive  
K117,684.89

K236,172.53.

Total:

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On even date, Mr. Imanui sent another quotation No.228055 to Mr. Thomas Naruse for the following motor vehicles:

1. 20 x Toyota Land cruiser 10 Seater Station Wagon  
K2,118,000.00

2. 1 x Toyota Landcruiser 5 Door Deluxe Wagon K  
136,990.70

3. 1 x Toyota Landcruiser 5 Door Wagon and K  
127,921.20

3. 2 x Utility Land cruisers K101,900.00 K  
203,800.00

4. 1 x Toyota Hilux 4Wheel Drive Double Cab Ute K 94,987.20

5. 1 x Toyota Hilux 3.0L 4Wheel Drive Double Cab Ute K  
114,900.01

6. 1 x Toyota Landcruiser 10 Seater Station Wagon K  
118,487.64

7. 1 x Utility Landcruiser K  
117,684.89

K3,032,771.64

Total:

On 26 February 2013, Mr. Lange wrote to the Sales Manager, Ela Motors Ltd and enquired whether it was possible for the Provincial Administration to acquire 10 motor vehicles on first installment payment and the remaining as and when the payment is secured. Below is the payment schedule.

15th March	15th April	15th May	Total
K1,415,400	K920,000	K697,371.64	K3,032,177.64

On 12 March 2013, Mr. Imanui sent another quotation numbered 233649 to Mr. Paul Ito Adam, within the Madang Provincial Administration for one New Toyota

Landcruiser 5  
Door Deluxe Wagon with total costing of K144,502.93.

On 13 March 2013, Mr. Imanui sent another quotation numbered 233804 to Mr. Lange for one New Toyota Landcruiser Prado and New Toyota Landcruiser Pick-Up 4.2 Wheel drive with a total cost of K236,172.53.

On 27 March 2013, Mr. Peter Pasum, Authorized Requisition Officer, raised a Requisition for Expenditure Form and the General Expenses Form for the first installment payment of K1,415,400.00 to Ela Motors Ltd for the 28 motor vehicles. Mr. Dunstan confirmed that funds were available from the Economic Item 135. Mr. Dunstan was a Financial Delegate with a limit of K2,000.00 and was also the Commitment Clerk at that time. The Requisition was approved by Mr. Lange following which Mr. Thomas Warr, Commitment Clerk committed the funds.

On even date, Mr. Gabriel Saul, then Provincial Treasurer, Madang Province raised two ILPOC's. The first one numbered 26261 for K1,415,400.00 and the second one numbered 26262 for K1,419,107.80. Attached to these ILPOCs was a Cheque numbered 115230 for K2,834,507.80 for Ela Motors Ltd.

The payment was for two sets of fleet of vehicles; the first payment of K1,419,107.80 was for a fleet of vehicles for the Police. The second payment of K1,415,400.00 was for the other fleet of vehicles Madang Provincial Government and the Madang Provincial Administration.

On even date, Mr. Graham Pais, the Provincial Budget Officer received a Cheque numbered 115230 worth K2,834,507.80 as payment for the purchase of motor vehicles for the Madang Provincial Administration fleet.

Comments

The Commission's investigation revealed that the Madang Provincial

Administration failed to comply with the tender and procurement procedures outlined in Section 40(1) and (2) of

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the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and Part 13 of the Financial Management Manual. That is, they did not conduct an open tender, inviting interested Bidders to bid for the supply of motor vehicles for the Provincial Administration and Provincial Government.

The Commission's investigation also revealed that the Madang Provincial Administration made a list of motor vehicles to purchase and forwarded the list to Ela Motors Ltd requesting for quotations for the type of motor vehicles that they wanted to purchase.

However, on 25 February 2013, Ela Motors Ltd Sale's Representatives sent over several quotations to and the last quotation numbered 228055 with total costing of K3,032,771.64 was forwarded to the Madang Provincial Administration. Then on the 15th day of the months March, April and May 2013, the Madang Provincial Administration made installment payments to Ela Motors Ltd.

On 27 March 2013, the Madang Provincial Administration raised a Cheque numbered 115230 for K2,834,507.80 in favor of Ela Motors Ltd. This payment was in two parts; the first part was for a fleet of motor vehicles for Police and the second part was for the Madang Provincial Government and Madang Provincial Administration.

Therefore, in total, the Madang Provincial Administration spent K5,867,279.44 on motor vehicles for the Madang Provincial Government, Madang Provincial Administration and Madang Police without complying with the proper tender and procurement procedures outlined in the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and the Finance Management Manual.

[2.4.1] RESPONSE FROM MR. GABRIEL SAUL THEN PROVINCIAL TREASURER,

## MADANG PROVINCE

On 18 March 2017, Mr. Saul responded to the Ombudsman Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract in regard to Part 1, Section 2.4:

### 4. FINDINGS OF FACTS

- PART 1. Paragraph 2.4 (page 19)

The findings pertaining to transactions dated 27th March 2013 pointing out my involvement in raising two ILPOCs (FF4A) to draw cheque number 115230 for K2,834,507.80 to Ela Motors Madang to confirm the dates, especially the year because I was not engaged until 24/3/2014.

#### Comments

The Commission noted Mr. Saul's response and checked and verified with the information in its possession and confirmed that during the material time that the Madang Provincial Administration and the Madang Provincial Treasury were involved in the purchase of 19 vehicles for the 19 LLG Presidents, Mr. Saul was not the Provincial Treasurer.

Even though the statement "...On 27 March 2013, Mr. Gabriel, then Provincial Treasurer, Madang Province raised two ILPOC's. The first one No. 26261 for K1,415,400.00 and the second one No.26262 for K1,419,107.80. Attached to these ILPOCs was a Cheque No. 115230 for K2,834,507.80 for Ela Motors Ltd..." is not true, in that Mr. Saul was not the Acting Provincial Treasurer at that material time.

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However, the fact remains that the Madang Provincial Treasury did raise a Cheque numbered 115230 that was paid to Ela Motors Ltd in order for the Provincial Administration to purchase 19 vehicles for the 19 LLG Presidents.

#### [2.5] NATIONAL EXECUTIVE COUNCIL DECISION No.414/2013 – SIP GUIDELINES

On 14 April 2013, the National Parliament passed the amendments to

Sections 39B and 47B of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013). These amendments increased the kina threshold amount for major procurement of goods and services for PSTBs from K3,000,000 to K5,000,000 and the Authority to Pre-Commit (APC) expenditure from K300,000 to K500,000 at the Provincial level.

On 18 November 2013, the NEC in its Special Meeting No.35/2013 made several decisions. Decision No.414/2013 was to enhance the Service Improvement Program (SIP) guidelines and to clarify responsibilities across levels of government in the 2014 National Budget.

#### Comments

In 2012, the National Parliament passed a K5.8 billion National 2013 Budget that was aimed at empowering the Provinces, Districts and LLGs to deliver goods and services to the bulk of the population in the rural and remote parts of the country. The Table below indicates how much was allocated to the Provinces, Districts and LLGs.

DB	Components	Description	Kina Million	% of
	PSIP	K5.0 million per district (89)	445.0	12.0
	DSIP	K10.0 million per district (89)	890.0	23.0
	LLGSIP	K0.5 million per LLG (314)	157.0	4.0

In line with the increase in SIP funds to the Provinces, Districts and LLGs, the NEC made several decisions that affected and effected the implementation of the National Government's 2013 Budget. These included the amendments to Sections 39B and 47B of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) that increased the all PSTBs threshold from K3,000,000 to K5,000,000 and the Authority to Pre-Commit (APC) expenditure threshold from K300,000 to K500,000 at the Provincial level.

#### [2.6] APPOINTMENT OF FINANCIAL DELEGATES, AUTHORIZED REQUISITION OFFICERS & SECTION 24 OFFICERS

On 27 March 2013, Mr. Saul submitted documents to the Governor's Office to change specimen signatures for the commitment of funds for 2014.

On 31 January 2014, Mr. Dunstan wrote to Mr. Saul and forwarded the



specimen signatures for Mr. Lange, Mr. Pasum and himself. They were now responsible for signing off on the Recurrent Budget, the PSIP funds, Non-Discretionary and Discretionary funds.

On 17 February 2014, Mr. Lange issued a Financial Directive No. 2/2014 outlining the appointment of Authorized Requisitioning Officers, Financial Delegates and Section 24 Officers for funds under the 783 Series for 2014. In that same Financial Directive, the financial limit for the First Secretary to the Governor was K2,000.00 inclusive. The Directive is as follows:

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FINANCIAL DIRECTIVE NO: 2/2014  
APPOINTMENT OF AUTHORISED REQUISITIONING OFFICERS FINANCIAL DELEGATES AND SECTION 24 OFFICERS FOR FUNDING UNDER THE 783 SERIES

By virtue of the powers conferred upon me under Sections 5, 32 and 33 and with the power of delegation bestowed on me under Section 110 of the Public Finance Management (Amendment) Act 1995, I, Bernard Lange, Provincial Administrator and Chief Accountable Officer, hereby appoint the following Designated Officers as Authorized Officers, Financial Delegates and Section 24 Officers of the 2014 Madang Provincial Government Estimates of Revenue & Expenditure commencing 01st January 2014 and ending on the 31st December 2014.

SECTION 24 FINANCIAL LIMIT	LOCATION	VOTE
District Administrator Recurrent K300,000.00 Inclusive	All District and LLGS	All projects and Expenditure
DPA (CGA) Recurrent K500,000.00 Inclusive	All Districts and LLGs	All Projects and Expenditure
DPA (PCI) Recurrent K500,000.00 Inclusive	PHQ	All projects and Expenditure
Provincial Administrator K5,000,000.00 Inclusive	All Districts, LLGS and PHQ	All Votes
DPA (CGA)	All Districts and LLGS	Provincial Trust

Accounts K500,000.00 Inclusive  
 DPA (PCI) PHQ Provincial Trust  
 Accounts K500,000.00 Inclusive  
 Provincial All Districts, LLGS and Provincial Trust  
 Accounts K5,000,000.00  
 Administrator PHQ  
 Inclusive

FINANCIAL VOTE CODE DELEGATE LIMIT	AUTHORIZED FINANCIAL REQUISITIONING OFFICER	LOCATION
Deputy District LLG 783-1011-9701 K2,000.00		Almami LLG
Administrator Executive Officers 783-1012-9701 Inclusive		Iabu LLG
Bogia 783-1013-9701		Yawar LLG
Deputy District LLG 783-1021-9701 K2,000.00		Ambenob LLG
Administrator Executive Officers 783-1022-9701 Inclusive		Transgogol LLG
Madang Manager MULLG 783-1023-9701		Madang Urban LLG
Deputy District LLG 783-1031-9701 K2,000.00		Arabaka LLG
Administrator Executive Officers 783-1032-9701 Inclusive		Josephstaal LLG
MRD 783-1033-9701		Simabi LLG
783-1034-9701		Kovon LLG
Deputy District LLG 783-1041-9701		Saidor LLG
Administrator Executive Officers 783-1042-9701 K2,000.00		NahoRawa LLG
Raicoast 783-1043-9701 Inclusive		Astrolabe Bay LLG
783-1044-9701		Nayudo LLG
Deputy District LLG 783-1051-9701 K2,000.00		Karkar LLG
Administrator Executive Officers 783-1052-9701 Inclusive		Sumgilbar LLG
Sumkar 783-1061-9701 K2,000.00		Bundi LLG
Administrator Executive Officers 783-1062-9701 Inclusive		Usino LLG
Usino Bundi 783-1063-9701		Gama LLG
Clerk of Assembly Admin Officer 783-1100-9101 K2,000.00		Assembly Services

			PHQ
Inclusive			
Cabinet Secretary	Executive Assistant		Provincial Executive
783-1100-9102	K2,000.00		Council
Inclusive			
First Secretary to	Admin Officer		Governor's Office -
783-1100-9104	K2,000.00		PHQ
Governor			
Inclusive			
Clerk of Assembly	Project Officer		Deputy Governor's
783-1100-9104	K2,000.00		Office
Inclusive			
E0	Provincial Executive Assistant		Provincial
783-1100-9111	K2,000.00		Administrators Office
Administrator			
Inclusive			
Director HRM	Personal		Public Service
783-1100-9121	K2,000.00		Support
	Officer/a/PSDT		
Inclusive			
	Officer		
Provincial Protocol	Executive Assistant		Protocol & Events
783-1100-9125	K2,000.00		
Officer			
Inclusive			
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Director Economic	Assistant Director		Project
783-1100-9127	K2,000.00		
Services	Finance	and	Administration and
Inclusive			
	Administration		Consultancy
Director	Executive Officer		Momase Governors'
783-1100-9133	K2,000.00		Secretariat
Inclusive			
Director Provincial	Executive Assistant		Search and Rescue
783-1100-9134	K2,000.00		Disaster Office
Disaster Office			
Inclusive			
Assistant Director	Provincial Budget		PHQ Consolidated
783-1100-9154	K2,000.00		Operations
Finance and Admin	Officer		
Inclusive			
Provincial	Admin Officer		Provincial Treasury
783-1100-9171	K2,000.00		Office
Treasurer			
Inclusive			
DPA (CTS)	Assistant Director		Administrators

783-1100-9901	K2,000.00	Finance and Admin	Advances
Inclusive			
Assistant Director Provincial Budget			Bio Products
783-2100-9101	K2,000.00	Finance and Officer	
Inclusive			
Administration			
Assistant Director Coordinator PPII			Provincial
783-2100-9102	K2,000.00	Finance and	Performance
Inclusive			
Administration			
Assistant Director Data Manager			Initiative and
783-2100-9103	K2,000.00	Policy Planning	Information and
Inclusive			
Technology			
Director Economic Assistant Director			Kalibobo Vision 2020
783-2100-9104	K2,000.00	Services Finance and	
Inclusive			
Administration			
Deputy District CEO Iabu LLG			Manam Affairs Office
783-2100-9105	K2,000.00	Administrator	
Inclusive			
DPA (CTS)		Assistant Director	Transfer of NHC
783-2100-9106	K2,000.00	Works	Titles
Inclusive			
Director (PCI)		Assistant Director	Ward Development
783-2100-9107	K2,000.00	Planning	Planning
Inclusive			
Director (PCI)		Assistant Director	SPSN Counterpart
783-2100-9108	K2,000.00	Planning	
Inclusive			
Assistant Director Marine Transport			Small Craft Act
783-2100-9109	K2,000.00	Works Inspector	Establishment
Inclusive			
Coordination			
Assistant Director Executive Assistant			Madang Development
783-2100-9301	K2,000.00	Commerce and	Cooperation
Inclusive			
Industry			
Assistant Director Executive Assistant			Madang Visitors and
783-2100-9302	K2,000.00	Commerce and	Cultural Bureau
Inclusive			
Industry			

Assistant Director Coordination			Co-operative Society
783-2100-9303	K2,000.00		
Commerce and Inclusive Industry		and Corporative Society	
Director (PCI)		Assistant Director	Governors House
783-2100-9601	K2,000.00	Works	Maintenance
Inclusive Assistant Director Executive Assistant			Community
783-2100-9701	K2,000.00		
Social Services			Development Services
783-2100-9702	Inclusive		Grants
783-2100-9703			
783-2100-9704			
Town Manager		Deputy Town	Beautification
783-2100-9705	K2,000.00	Manager	Program
Inclusive Assistant Director			Kranget Island Water
783-2100-9706	K2,000.00	Works Building Inspector	Supply
Inclusive Coordination			
Assistant Director			Gama LLG Chamber
783-2100-9707	K2,000.00	Works Building Inspector	
Inclusive Coordination			
Assistant Director			Naho Rawa LLG
783-2100-9708	K2,000.00	Works Building Inspector	Chamber
Inclusive Coordination			
Provincial Provincial		Assistant Director	LLGs, Districts and
	K2000.00		

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Treasurer Finance and PHQ Trust Inclusive Administration

All expenditures must be made against accounting forms Payments Voucher (FF4) and Requisition for Expenditure (FF3).

Purchases over K300,000.00 for Goods, Services or Works are subject to Government Tender Procedures.

Purchases of K299,000.00 or less –

a. Where the cost is K2000.00 or less purchase may be made from any supplier without three quotes.

b. For cost over K2,000.00 but up to K5,000.00 three verbal quotations must be obtained from local suppliers and recorded in a quotations register. Where three quotations could not be obtained, an explanatory note must be made in the register.

c. For cost over K5,000.00 but up to K299,000.00, three written quotations must be obtained. Quotations will be entered in a register and filed. Where for special reasons there are only one or two suppliers, the register and files must be noted accordingly.

d. Where quotations are the same or the lowest quotation is not chosen, the purchasing officer must explain the reason of his/her choice of supplier on the requisition form (FF3), in the quotation register and on the file.

e. In deciding between suppliers quoting the same amount, equal consideration of business must at all times be exited between the competing suppliers. Care must be taken to ensure quotations are obtained only from those capable of supplying the items or rendering the service.

Any expenditure that exceeds the Financial Delegate limit must always bear the endorsement of the section 24 officer on the Requisition for Expenditure (FF3).

(Signed)

BERNARD LANGE  
Provincial Administrator

Dated this 17 day of FEBRUARY 2014

On even date, Mr. Dunstan forwarded the specimen signatures for Mr. Lange, Mr. Galun Kassas, then Deputy Provincial Administrator responsible for Community and Government Affairs, Mr. Thomas Warr, then Acting Administrative Officer to the Office of the Provincial Treasurer, for commitment of funds for the Office of the Governor with their financial limits.

NO	NAME	DESIGNATION	SPECIMEN SIGNATURE	DELEGATION
1	Bernard	Provincial Administrator		Section 32 Officer

	Alvin Lange		K50,000.00 –
K5,000,000.00			
2	Deputy Provincial Galum Kassas Administrator C&GA		Section 32 Officer <K50,000.00
3	Augustine Dunstan First Secretary		Financial Delegate
4	Acting Administrative Requisition Thomas Warr Officer		Authorised Officer (AR0)

In June 2014, the NEC appointed Mr. Danny Aloï as then Acting Provincial Administrator replacing Mr. Lange.

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On 4 February 2015, Mr. Aloï approved Financial Directive No.2/2015: Appointment of Authorised Requisition Officers, Financial Delegates and Section 24 Officers for fund under 783 Series.

On 17 November 2015, Hon. Jim Kas, then MP, Governor, stated during his interview that:

–...The LLG Budgets where not yet refunded and they had the money that they had, considering the money that they had and vehicles that they were hiring I thought it was the best thing to do for them and that was to get vehicles for them. So I mean they were elected as mandated leader so I thought it was best to get them vehicles to save money for a particular and that was the basis on which I brought this idea up with JPP also I made a commitment whilst there on the LLG's during the swearing inn that as the Governor I had to commit about K100, 000.00 to each LLG so that amounted to about K1.9 million. Brought that idea to JDP and got JDP to have it resolved and thought it was best buy vehicles for LLG Presidents basically to save costs...||

#### Comments

In 2012, then Hon. Governor made a political commitment to all the 19 LLG Presidents and

the Provincial Administration that he would ensure that all the 19 LLG Presidents and the Provincial Administration would be issued with motor vehicles.

In the following year, the Provincial Administration made a list of vehicles to replace its own aging fleet. However, the Provincial Administration was not able to purchase these vehicles all at once. Hence payments by installment arrangements were made between the Provincial Administration and Ela Motors Ltd.

The amount involved in purchasing the motor vehicles was K1,415,400.00 and it was required to go through the proper tender and procurement procedures in compliance with Sections 5(2), 40 and 110 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and Part 11 and Part 13 of the Financial Instructions.

An analysis of the Financial Directive No.2/2014 with the list of Financial Delegates and their financial limits revealed that Mr. Dunstan and the Administration Officer were authorised to approve procurements within the K2,000.00 limits and no more. Hence, the officer should not have signed on the Requisition for Expenditure Form and General Expenses Form as K1,415,400.00 was well above his financial delegation. This was in direct breach of Sections 5(2) and 110 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) which state:

#### 5. RESPONSIBILITIES OF HEADS OF DEPARTMENTS.

(2) The responsibility of a Departmental Head under Subsection (1) is not derogated or reduced by reason of any delegation of functions by him to another person.

#### 110. DELEGATION

A Departmental Head may, by instrument, delegate to a person all or any of his powers and functions under this Act (other than this power of delegation).

The Commission's investigation revealed that those responsible and who had signed on the Requisition for Expenditure and General Expenses Forms did not have the appropriate financial delegation to facilitate the procurement process. This is further analysed below:



1. That the code number 135, written under the ITEM section of the code structure, is used for Other Operational Expenses, which include printing, committee attendance fees,

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audit expenses, interpreters fees, official entertainment expenses, conference and workshop expenses.

It is also used for payment for advertisement of vacancies, interview costs, recruitment airfares for shortlisted candidates and for successful applicants from point of recruitment to place of employment and shipment of personnel effects in an out, settling in and out allowances and repatriation expenses.

2. However, in this case, the code number 135 from where funds were used to purchase vehicles was not the correct code number. The correct code number that should have been used is code number 222 which identifies what the expenditure was for, in this case, it was the purchase of all types of motor vehicles.

3. A further analysis of the Finance Forms, in particular, the code structure tabled below, it was found that:

DIV	FN	ACT	ITEM	AMOUNT
This Financial Year				
283	2100	8901	135	K1,415,400.00
Subsequent Financial Years				

DIV is an abbreviation for Division and it identifies the agency. In this case, it is the Department of Madang with the code number 283.

FN is an abbreviation for Function and it identifies the strategic area. In this case, the strategic area code number 2100 was allocated to the Deputy Provincial Administrator.

This means that the Deputy Provincial Administrator had the authorization and the financial delegate to sign the Requisition for Expenditure and General Expenses Forms because the amount was within his limit.

ACT is an abbreviation for Activity and it identifies from what particular area funds are

derived from. In this case, it is the code number 8901 that identifies the activity as PSIP and DSIP

When the Provincial Treasurer identified that funds could be moved from the PSIP, DSIP and LLGSIP, it meant that those activities at the Districts and the Province would have to be reprioritized in order to fulfill the political commitment made by then Hon. Governor.

ITEM is an abbreviation for Item and it identifies expenditure activity and in this case code number 135 was used to identify Other Operational Expenses and not for the purchase of vehicles which is code number 222.

Mr. Torot was the Financial Delegate who had the authority to sign the Requisition Forms and the General Expenses Forms, however Mr. Dunstan instead signed the Forms.

The Commission's investigation also revealed that the position of First Secretary to the Governor for Madang Province that Mr. Dunstan occupied did not exist. This was due to the fact that Section 1 of the Official Personal Staff Act states:

-1. Persons entitled to official personal staff.

The following persons are entitled to official staff in accordance with the provisions of this Act:-

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- (a) the Prime Minister; and
- (b) a Minister; and
- (c) the Leader of the Opposition; and
- (d) the Leader of a minority Party (being a party with at least 12 members of Parliament) recognized as such by the Speaker; and
- (e) the Speaker.
- (f) A Parliament Secretary appointed under the Parliamentary Secretaries Act 2004.

The Salary Remuneration Committee Determination

SCHEDULE G007-18

OFFICIAL PERSONAL STAFF

Recipients A:

1. Prime Minister
1. Deputy Prime Minister
2. Speaker
3. Deputy Speaker
4. Leader of the Opposition
5. Deputy Leader of the Opposition
6. Ministers
7. Vice-Ministers
8. Former Prime Ministers

Benefits: Such staffing, levels as are approved by the Prime Minister from time to time in accordance with the Official Staffing Act.

Recipient B: Provincial Governors

Benefits: Personal staff allowance of K100,000 per annumll.

The Official Personal Staff Act identifies who is entitled to official personal staff. In this instance, the Hon. Governor is entitled to a personal staff. However, the personal staff must be appointed by the Prime Minister.

The Commission's investigation revealed that there was no documentary evidence presented to indicate that Mr. Dunstan was appointed by the Prime Minister in accordance with Section 4 of the Official Personal Staff Act. Hence, in the absence of the Prime Ministerial appointment and lack of authority and power, Mr. Dunstan improperly exercised his position to endorse or approve requisitions and ILPOCs.

The Commission's investigation also revealed that Mr. Lange, as the Chief Accountable Officer and Section 32 Officer, failed in his duty to properly conduct due diligent checks on the Requisition for Expenditure Forms and General Expenses Forms. That is, he failed to ensure that the appropriate authorised Officers signed the Finance Forms as required under Section 5(a), (b), (c), (d), (e) and (f) of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013), which states:

## 5. Responsibilities of Heads of Departments.

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(1) Each Departmental Head is responsible for ensuring that, in relation to the Department of which he is Head—

- (a) the provisions of this Act are complied with; and
- (b) all accounts and records relating to the functions and operations of the Department are properly maintained; and
- (c) all necessary precautions are taken to safeguard the collection and custody of public moneys; and
- (d) all expenditure is properly authorized and applied to the purposes for which it is appropriated; and
- (e) there is no over commitment of funds and a review is undertaken each month to ensure that there is no over-expenditure or over commitment and the collection of public moneys is according to approved plans and estimates; and
- (f) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste; and

In this instance, Mr. Dunstan who had a financial limit of K2,000.00 as per Financial Directive No.2/2014, signed both the Requisition for Expenditure and General Expenses Forms as Financial Delegate. This was wrong because the amount K1,415,400.00 for the purchase of motor vehicles was higher than his financial limit.

An Accountable Officer is, a person authorised by instrument in accordance with Section 6 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013), which states:

## 6. Accountable officers.

- (1) A person who—
  - (a) is an officer; or
  - (b) authorizes the collection or payment of public moneys or

accounts for stores, whether  
or not he is an officer,

is an accountable officer for the purposes of this Act.

(2) An accountable officer shall comply with the provisions of this Act in respect of all matters for which he is responsible and for all public moneys and stores in his possession or under his control, and shall duly account for them.

Mr. Dunstan was not the Accountable Officer to sign off on the Finance Forms and his conduct was in direct breach of Section 6(1) and (2) of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013).

The Commission's investigation also revealed that Mr. Saul as the Financial Delegate, approved the Requisition for Expenditure Form and General Expenses Form and proceeded to raise the ILPOC Form together with the cheque.

Then on 27 March 2013, Mr. Graham Paias, the Provincial Budget Officer, signed the ILPOC Form and received the Cheque No.115230 valued at K2,834,507.80 which he delivered to Ela Motors Ltd.

The Commission noted that the certification for payment was wrong because the Madang Provincial Administration and the Provincial Treasury failed to comply with the procurement procedures.

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[2.6.1] RESPONSE FROM MR. GABRIEL SAUL THEN PROVINCIAL TREASURER, MADANG PROVINCE

On 18 March 2017, Mr. Gabriel Saul, then Provincial Treasurer, Madang Province responded to the Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract in regard to Part 1, Section 2.6:

- PART 1. Paragraph 2.6 (page 20)

I was not engaged as Provincial Treasurer until 24th March 2014.

- PART 1. Paragraph 2.6 (Points 2 & 3 on page 25).

My explanations...all Service Improvement Program (SIP) funding

throughout the Country is categorized or itemized under PGAS expenditure item 135 only. Provincial Treasurers' has no authority to change the approved Chart of Account (CoA) thus all purchases including purchase of vehicles, vessels, plant & equipment and other machineries are acquired using Item 135.

Further note that Function (FN) code number 2100 is NOT for the Deputy Provincial Administrator. Digit 2 indicates that it's a Project and figure 100 indicates that it is located within the provincial headquarter.

- PART 1. Paragraph 2.6 (page 27)

Third paragraph, the Provincial Administrator (PA) is NOT the Chief Accounting Officer he/she is the Chief Accountable Officer and Section 32 (1) Officer. Provincial Treasurer (PT) is the Chief Accounting Officer and Financial Delegate (Section 32 (4) Officer) for PSIP. PSIP, DSIP & LLGSIP Financial limitations were determined by Secretary Finance in Finance Instruction number 1/2013.

Financial Limitations determined by the Provincial Administrator are for Recurrent and Project Appropriations under Divisions 283 & 783 and for Local Level Governments (LLG) under Division 711.

#### Comments

The Commission noted that during the material time, the Madang Provincial Administration and the Madang Provincial Treasury were involved in the purchase of 19 vehicles for the 19 LLG Presidents, Mr. Saul was not the Provincial Treasurer or the Acting Provincial Treasurer.

The Commission also noted Mr. Saul's explanation in regard to Service Improvement Program funding and appreciated his explanation on the Service Improvement Program funding. The Commission agrees with Mr. Saul's explanation in regard to the PGAS expenditure Item 135 and Item 222 as stated above in the Commission's original comments contained in the Provisional Report. Hence, amendments have been made and incorporated into this particular section of this Report.

The Commission appreciates Mr. Saul's explanation and clarification on the distinction between the –Chief Accounting Officer|| who is the Provincial Treasurer and Section 32(4) Officer and the –Chief Accountable Officer|| who is the Provincial Administrator and Section 32(1) Officer.

The Commission also appreciates the explanation that Finance Forms No.3 (FF3) can be certified by the Section 32(4) Officer, this is in particular regard to the approval and release of funds under Service Improvement Program.

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PART 2: PURCHASE OF MOTOR VEHICLES BY THE OFFICE OF THE GOVERNOR, MADANG PROVINCE

[2.7] MADANG PROVINCIAL GOVERNMENT 2014 BUDGET

On 18 November 2013, the Madang Provincial Government passed the Revenue & Expenditure Estimates for the Year Ending 31 December 2014.

The 2014 Madang Provincial Budget is a document that not only shows the estimates for the year 2014, but it also shows the expenditures and revenues for the years 2012 and 2013.

On 16 January 2014, the Madang Provincial Government passed the Appropriation Act 2014. Below are extracts of the 2014 Budget.

MADANG PROVINCIAL GOVERNMENT  
NO. 1 OF 2014  
A Bill for an Act  
Entitled

APPROPRIATION ACT 2014

Being an Act under Section 105 (A) of the Organic Law on Provincial Governments and Local Level Governments:

1. To permit and control the spending of Finances of the Province and
2. To specify the purposes for which the Finances of the Province may be spent and

3. To make provisions for excess or unexpected expenditures as and when necessary.

Made by the Madang Provincial Assembly to come into operation on the 1st day of January in year 2014.

1. INTERPRETATION:

(i) The document entitled –YEAR 2014 PROVINCIAL ESTIMATES OF REVENUE AND EXPENDITURE presented by the Chairman to the Madang Provincial Assembly on the occasion of the Year 2014 Expenditure and Revenue shall herein after be referred to as –the Estimates.

2. TOTAL APPROPRIATION K239,940,600.00 CONSISTS OF NATIONAL GRANTS K211,284,800.00 ROLLOVER FUNDS K13,413,600.00 AND PROVINCIAL INTERNAL REVENUE K15, 242,200.00

1) The State shall grant to the Madang Provincial Government K211,284,800.00 as per Sections 92, 93 and 97 of the amended Organic Law on Provincial and Local Level Governments Intergovernmental Financing Arrangements.

2) The State shall grant to the nineteen (19) established and existing Local Level Governments a total sum of K4,298,600.00 as per the provisions under Sections 93 and 94 of the Organic Law on Provincial and Local Level Governments.

3) Under Financial Instruction 1B (8) of 2010, the unspent grants or rollover funds are captured in the 2014 financial year estimates.

4) The Madang Provincial Government shall raise its internal revenue of K15,242,200.00.

5) The Local Level Governments shall raise their anticipated internal revenues.

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6) The Chairman may authorize the issue and expenditures from the finances of the Provincial and Local Level Government for goods and services for the fiscal year commencing January of 2014 the sum of K239,940,600.00 as contained in Section 2(3)(4) and (5).



### 3. APPROPRIATION:

The sum estimated under Section 2 sub-section (1) to (5) is appropriated for the purpose of goods and services specified in relation to the fiscal year starting 1st January 2014.

### 4. EXPENDITURE IN EXCESS OF APPROPRIATION:

(1) Where and when insufficient appropriation exists in the estimate to meet expenditure under an item, the Chairman, upon the recommendation from the Chief Accountable Officer may direct that the expenditure shall be met by transferring appropriation from another item within the same activity.

(2) Where insufficient appropriation exists in an estimate to meet an expenditure under an activity, the Chairman, upon recommendation from the Chief Accountable Officer, may direct that the expenditure shall;

(a) Be met by transferring an appropriation from another activity within the same head of programme or

(b) Be charged against the same activity by transferring from the activity entitled –Administrator’s Advancell (unforeseen expenditure) for appropriations under Section 2(3) and (4) and changed, partially in accordance with Section 5(2).

(3) Where insufficient appropriation exists in the estimate to meet expenditure under a main programme, the Chairman, may authorize the transfer of money from one main programme to another of in his opinion it is expenditure to do so, subject to Section 5(1) and (2) of this Act, for appreciation under Section 2(3) and (4).

### 5. EXPENDITURE NOT PROVIDED FOR:

(1) Where no appropriation exists in the estimate to meet expenditure, the expenditure shall be charged against the activity entitled –Administrator’s Advancell upon approval by the Chairman of Finance.

(2) Where no appropriation exists in the estimate to meet expenditure under a main programme, the Chairman may authorize transfer of money from one main programme to

another programme if in his opinion, it is expedient to do so, subject to Section 5(1) of this Act.

(3) Where a –Change of Scopell is requested in the estimate the Chairman may authorize the expenditure upon endorsement by the Provincial Assembly after recommendations from the Provincial Executive Council.

#### 6. BUDGET REVIEW COMMITTEE:

(1) There shall be a Budget Review Committee appointed by the Provincial Executive Council.

(2) The Committee shall consist of the following persons:

- (a) the Provincial Administrator as the Chairman
- (b) the Deputy Administrator – Corporate and Technical Services
- (c) the Deputy Administrator – Community and Government Services
- (d) Director – Policy Coordination & Implementation
- (e) Principal Legal Officer
- (f) Director – HRM
- (g) Provincial Treasurer
- (h) The Chief Internal Auditor

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(i) The Assistant Director Finance & Administration

All members must be present to make the quorum.

(3) The Committee shall report to the Finance & Planning Committee of the Provincial Executive Council.

(4) All Quarterly or Special Reviews carried out by the Budget Review Committee shall be presented to the Finance and Planning Committee of the Provincial Executive Council for its vetting and/or approval before Warrants and Cash Fund Certificates are issued or transferred, disbursed, remitted or paid.

(5) The Provincial Budget Officer is the Executive Officer to the Budget Review Committee.

(6) Records of all meetings and decisions of the Budget Review Committee shall be kept by the Provincial Budget Officer and be made available upon request.

7. NOTICE TO PROVINCIAL CHIEF INTERNAL AUDITOR:

The Chairman shall give notice to directions given by him under Section 4 and 5 to the Provincial Chief Internal Auditor within 30 days of giving such direction.

		Revenue Estimates for 2014		
		Appropriation Bill (in thousands of Kina)		
Code		Description		Actual
Appropriation				2012
2013	2014			
		National Government Grants		105,470.9
209,385.9	211,284.8			
		Recurrent Unconditional Grants to Provinces & LLGs		3,026.0
4,961.8	6,828.9			
111/1		Administration Grant		811.1
892.2	3,129.3			
111/9		Other Service Delivery Function Grant		2,214.9
4,069.6	3,699.6			
		Recurrent Conditional Grants to Provinces & LLGs		95,131.0
88,052.7	97,657.3			
116/3		Primary Production Function Grant		1,508.0
2,497.8	3,174.6			
112/1		Staffing Grant		21,061.8
20,675.5	20,675.5			
112/4		Teachers' Salaries (TSC)		52,283.0
41,935.5	41,935.5			
111/2		Public Servants Leave Fares		1,225.4
955.4	955.4			
111/4		Teachers Leave Fares		931.5
1,711.5	1,711.5			
112/5		Village Courts Allowance		321.0
453.2	453.2			
113/2		Health Function Grant		5,515.0
5,954.8	8,497.6			
113/4		Education Function Grant		4,369.8
5,161.7	8,148.0			
113/6		Transport/Infrastructure Maintenance Grant		7,571.6
8,363.4	11,600.8			
113/5		Village Courts Function Grant		343.9
343.9	505.2			
		(Public Investment Programme)		1,750.0
90,000.0	90,000.0			
		Madang Provincial Government MNDG		1,750.0
0.0	0.0			
118/2		District Support Improvement Program–Madang		0.0
60,000.0	60,000.0			
117/1		Provincial Support Improvement Program–Madang		0.0
30,000.0	30,000.0			
		Infrastructure Development		0.0
13,000.0	3,000.0			

118/4	Manam Islanders Resettlement Project	0.0
3,000.0	3,000.0	
	Madang Town Road	
10,000.0	0.0	
	District Services	2,000.0
0.0	0.0	
	District Dispensary Upgrade Program	200.0
0.0	0.0	
	District Dispensary Upgrade Program	600.0
0.0	0.0	
	District Dispensary Upgrade Program	1200.0
0.0	0.0	
	LLG Grants	3,563.9
13,371.4	13,798.6	
114/7	LLG Grants	3,563.9
3,871.4	4,298.6	
118/5	LLG Service Improvement Program	0.0
9,500.0	9,500.0	
	SUB TOTAL	105,470.9
209,385.9	211,284.8	
	2013 Roll Over Grants	5,517.5
6,549.6	13,413.6	
120/1	Administration	319.3
356.0	1,211.3	
120/2	Health Function	238.4
435.6	0.0	
120/3	Education	280.8
441.6	559.4	
120/4	Transport Infrastructure	1,581.1
1,312.5	1,731.7	

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120/7	NADP	3,054.6	0.0	0.0
120/8	Village Court Function	6.6	173.4	
36.0				
120/9	Primary Production	36.7	30.8	
266.4				
120/10	Teachers Leave Fares	0.0	116.6	
116.6				
120/12	LLG Grant	0.0	558.0	
890.2				
120/13	Public Service Support	0.0	153.4	
230.2				
120/14	LLG SIP	0.0	0.0	
100.0				
120/15	Manam Resettlement	0.0	0.0	
1,438.9				
120/16	Madang Town Road	0.0	0.0	
6,321.8				
120/17	Free Health Care 2013	0.0	0.0	
511.1				

	INTERNAL REVENUE	8,219.8	20,739.0	
15,242.2				
601100/	Taxes	4,351.0	11,000.0	
10,954.2				
1	Goods and Services Tax	4,351.0	5,000.0	
9,795.3				
2	Bookmakers Tax	0.0	6,000.0	
1,158.9				
3	Gambling Tax	0.0	0.0	0.0
602100/	Fees and Fines		2,334.0	
3,603.0				
1	Abattoirs Slaughter Fees	0.7	10.0	0.0
2	Stale/Cancelled Cheque Fees	5.0	10.0	0.0
3	Business Development Centre Fees	1.3	5.0	0.0
4	Education Resource Centre Fees	0.0	4.0	0.0
5	Driving License Fees	176.1	300.0	
300.0				
6	Heavy Motor Vehicle Registration Fees	54.1	200.0	
200.0				
7	Motor Vehicle Registration Fees	966.3	1,320.0	
2,350.0				
8	PMV License Fees	56.4	120	
120.0				
9	MVIL Commission Fees	24.3	0.0	
48.0				
10	Land Transport Board Control Fees	92.0	90.0	
300.0				
11	Liquor Licensing Fees	137.7	250.0	
250.0				
12	MPG Driving Permit and ID Fees	1.5	5.0	5.0
15	Tender Board Fees	14.7	15.0	
15.0				
16	Pre-qualification and Arch-Design Fees	1.1	5.0	
15.0				
603100/	Business Receipts	46.6	7,075.0	
355.0				
1	Cash Crop Sales	0.0	400.0	0.0
2	Disposals of Assets	19.3	30.0	
30.0				
3	Export Log Levy	10.0	70.0	
300.0				
4	Fish Landing Fees	0.0	1,500.0	0.0
5	MPG Operating Account Interest	0.0	50.0	0.0
6	Minor Power House	1.8	2.0	2.0
7	Information Printing Charges	0.0	3.0	3.0
8	MPG Housing Rentals	20.0	20.0	
20.0				
9	MCC Grant	0.0	5,000.0	0.0
604100/	Miscellaneous	2,072.5	330.0	
330.0				
1	Former Years Appropriation	58.7	300.0	
300.0				
3	2011 PDIP Rollover	2,000.9	0.0	0.0

4	Sundry Revenue	12.9	30.0
30.0			
	TOTAL REVENUE		
119,208.22	36,674.52	39,940.6	

In the 2014 Provincial Budget, it was revealed that K60 million was allocated to the six Districts, with each District allocated K10 million each. While K500,000 was allocated to the 19 LLGs totaling K9.5 million. Below are tables for each District and LLG outlining allocations for the years 2012, 2013 and 2014.

1. Bogia District

Activity:	DSIP – Bogia	Function:	Other Services
Activity Type:	Project	Program:	District Support
	Description	Item	2012 2013
2014			
283-2010-8901	District Support Grants (SSG) and Rural		
Action Program [DSIP]			
Other Operational Expenses	135		
10,000.0			
10,000.0			
Grand Total		0.0	0.0
10,000.0			

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Activity:	LLGSIP – Almami	Function:	Other
Services		Program:	District
Activity Type:	Project		
Support	Description	Item	2012
2013	2014		
283-2011-8901	District Support Grants (SSG) and Rural		
Action Program [LLGSIP Grant]			
Other Operational Expenses	135		
500.0			
500.0			
Grand Total		0.0	0.0
500.0			

Activity:	LLGSIP – Iabu	Function:	Other
Services		Program:	District
Activity Type:	Project		
Support	Description	Item	2012
2013	2014		
283-2012-8901	District Support Grants (SSG) and Rural		
Action Program [LLGSIP Grant]			

Other Operational Expenses135  
500.0

500.0

Grand Total  
500.0

0.0 0.0

Activity: LLGSIP – Yawar  
Services  
Activity Type: Project  
Support

Function: Other  
Program: District

Description		Item	2012
2013	2014		
283-2013-8901		District Support Grants (SSG) and Rural Action Program [LLGSIP Grant]	
		Other Operational Expenses135	

500.0

Grand Total  
500.0

0.0 0.0

## 2. Madang District

Activity: DSIP – Madang Urban  
Services  
Activity Type: Project  
Support

Function: Other  
Program: District

Description		Item	2012
2013	2014		
283-2020-8901		District Support Grants (SSG) and Rural Action Program [DSIP]	
		Other Operational Expenses 135	

10,000.0

Grand Total  
10,000.0

0.0 0.0

Activity: LLGSIP – Ambenob  
Services  
Activity Type: Project  
Support

Function: Other  
Program: District

Description		Item	2012
2013	2014		
283-2021-8901		District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]	
		Other Operational Expenses135	

500.0

Grand Total  
500.0

0.0 0.0

Activity: LLSIP –Transgogol Services  
 Activity Type: Project Support  
 Function: Other  
 Program: District

2013	Description	Item	2012	
2014				
283-2022-8901	District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]			
	Other Operational Expenses	135		
500.0				
500.0				
Grand Total			0.0	0.0
500.0				

Activity: LLSIP –Madang Urban Services  
 Activity Type: Project Support  
 Function: Other  
 Program: District

2013	Description	Item	2012	
2014				
283-2023-8901	District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]			
	Other Operational Expenses	135		
500.0				
500.0				
Grand Total			0.0	0.0
500.0				

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### 3. Middle Ramu District

Activity: DSIP – Middle Ramu Services  
 Activity Type: Project Support  
 Function: Other  
 Program: District

2013	Description	Item	2012	
2014				
283-2030-8901	District Support Grants (SSG) and Rural Action Program [DSIP]			
	Other Operational Expenses	135		
10,000.0				
10,000.0				
Grand Total			0.0	0.0



10,000.0

Activity: LLSIP – Arabaka Function: Other  
Services  
Activity Type: Project Program: District  
Support

Description		Item	2012	
2013	2014			
283-2031-8901		District Support Grants (SSG) and Rural		
Action Program [LLSIP Grants]				
Other Operational Expenses		135		

500.0				
Grand Total			0.0	0.0
500.0				

Activity: LLSIP – Josephstaal Function: Other  
Services  
Activity Type: Project Program: District  
Support

Description		Item	2012	
2013	2014			
283-2032-8901		District Support Grants (SSG) and Rural		
Action Program [LLSIP Grants]				
Other Operational Expenses		135		

500.0				
Grand Total			0.0	0.0
500.0				

Activity: LLSIP – Simbai Function: Other  
Services  
Activity Type: Project Program: District  
Support

Description		Item	2012	
2013	2014			
283-2033-8901		District Support Grants (SSG) and Rural		
Action Program [LLSIP Grants]				
Other Operational Expenses		135		

500.0				
Grand Total			0.0	0.0
500.0				

Activity: LLSIP – Kovon Function: Other  
Services  
Activity Type: Project Program: District  
Support

Description		Item	2012	
2013	2014			
283-2034-8901		District Support Grants (SSG) and Rural		

Action Program [LLGSIP Grants]  
 Other Operational Expenses 135  
 500.0

500.0

Grand Total 0.0 0.0  
 500.0

4. Rai Coast District

Activity: DSIP – Raikos Function: Other  
 Services Program: District  
 Activity Type: Project  
 Support

Description		Item	2012
2013	2014		
283-2040-8901		District Support Grants (SSG) and	
Rural Action Program [DSIP]			
Other Operational Expenses	135		
10,000.0			

10,000.0

Grand Total 0.0 0.0  
 10,000.0

Activity: LLGSIP – Saidor Function: Other  
 Services Program: District  
 Activity Type: Project  
 Support

Description		Item	2012
2013	2014		
283-2041-8901		District Support Grants (SSG) and Rural	
Action Program [LLGSIP Grants]			
Other Operational Expenses 135			
500.0			

500.0

Grand Total 0.0 0.0  
 500.0

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Activity: LLGSIP – Naho Rawa Function: Other  
 Services Program: District  
 Activity Type: Project  
 Support

Description		Item	2012
2013	2014		
283-2042-8901		District Support Grants (SSG) and Rural	
Action Program [LLGSIP Grants]			

Other Operational Expenses135  
500.0

500.0

Grand Total  
500.0

0.0 0.0

Activity: LLGSIP – Astrolabe Bay  
Services  
Activity Type: Project  
Support

Function: Other  
Program: District

Description		Item	2012
2013	2014		
283-2043-8901		District Support Grants (SSG) and Rural	
Action Program [LLGSIP Grants]			
Other Operational Expenses135			
500.0			

500.0

Grand Total  
500.0

0.0 0.0

Activity: LLGSIP – Nayudo  
Services  
Activity Type: Project  
Support

Function: Other  
Program: District

Description		Item	2012
2013	2014		
283-2044-8901		District Support Grants (SSG) and Rural	
Action Program [LLGSIP Grants]			
Other Operational Expenses135			
500.0			

500.0

Grand Total  
500.0

0.0 0.0

#### 5. Sumkar District

Activity: DSIP – Sumkar  
Services  
Activity Type: Project  
Support

Function: Other  
Program: District

Description		Item	2012
2013	2014		
283-2050-8901		District Support Grants (SSG) and	
Rural Action Program [DSIP]			
Other Operational Expenses 135			
10,000.0			

10,000.0

Grand Total  
10,000.0

0.0 0.0

Activity: LLSGIP – Karkar Services  
 Activity Type: Project Support  
 Function: Other  
 Program: District

2013	Description	Item	2012
2013	2014		
283-2051-8901	District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]		
	Other Operational Expenses	135	
500.0			
500.0			
Grand Total			0.0 0.0
500.0			

Activity: Karkar LLSGIP (2013 Rollover) Services  
 Activity Type: Project Support  
 Function: Other  
 Program: District

2013	Description	Item	2012
2013	2014		
283-2051-8901	District Support Grants (SSG) and Rural Action Program [LLGSIP Grants (Rollover 2013)]		
	Other Operational Expenses	135	
100.0			
100.0			
Grand Total			0.0 0.0
100.0			

Activity: LLSGIP – Sumgilbar Services  
 Activity Type: Project Support  
 Function: Other  
 Program: District

2013	Description	Item	2012
2013	2014		
283-2052-8901	District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]		
	Other Operational Expenses	135	
500.0			
500.0			
Grand Total			0.0 0.0
500.0			

6. Usino - Bundi District

Activity: DSIP - Usino-Bundi Function: Other  
 Services  
 Activity Type: Project Program: District  
 Support

Description		Item	2012	
2013	2014			
283-2060-8901		District Support Grants (SSG) and Rural Action Program [DSIP]		
		Other Operational Expenses	135	
				10,000.0
				10,000.0
				Grand Total
				10,000.0
			0.0	0.0

Activity: LLGSIP - Bundi Function: Other  
 Services  
 Activity Type: Project Program: District  
 Support

Description		Item	2012	
2013	2014			
283-2061-8901		District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]		
		Other Operational Expenses	135	
				500.0
				500.0
				Grand Total
				500.0
			0.0	0.0

Activity: LLGSIP - Usino Function: Other  
 Services  
 Activity Type: Project Program: District  
 Support

Description		Item	2012	
2013	2014			
283-2062-8901		District Support Grants (SSG) and Rural Action Program [LLGSIP Grants]		
		Other Operational Expenses	135	
				500.0
				500.0
				Grand Total
				500.0
			0.0	0.0

Activity: LLGSIP - Gama Function: Other  
 Services  
 Activity Type: Project Program: District  
 Support

Description		Item	2012	
2013	2014			
283-2063-8901		District Support Grants (SSG) and Rural		

Action Program [LLGSIP Grants]  
Other Operational Expenses 135  
500.0

500.0

Grand Total

0.0

0.0

500.0

#### Comments

The Commission's investigation it was revealed that the Madang Provincial Assembly and the Provincial Government passed the Appropriation Act 2014 that did not capture the intention of Section 187C(1) and (4) of the Constitution, which state:

187C. Constitution, functions, etc., of Provincial Governments and Local-level Governments.

(1) Subject to this Part, an Organic Law shall make provision in respect of the constitution, powers and functions of a Provincial Government or a Local-level Government.

(4) An Organic Law shall make provision for and in respect of-

(a) grants by the National Government to Provincial Governments and Local-level Governments; and

(b) subject to Subsection (4A), the imposition, collection and distribution of taxation by Provincial Governments and Local-level Governments,

and may make other financial provisions for Provincial Governments and Local-level Governments, to an extent reasonably adequate for the performance of their functions.

The Commission's investigation revealed that all the six Districts and 19 LLGs in Madang Province forwarded their plans to the Provincial Planner to include as part of the Provincial Budget. After the Provincial Planner has incorporated all the Districts and LLG's plans into one Provincial Plan, it is then submitted to the Provincial Treasury who is required to

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finalize and endorse the plan. This would be in line with Section 106 of the Organic Law on Provincial Governments and Local Level Governments which state:

106. Provincial Planning and Data System.

(1) There shall be established in each province an extended service of the Department responsible for planning matters and of the National Statistical Office.

(2) The functions of these services are to establish and maintain an effective and efficient provincial and local-level planning and data system.

This aspect of the budgetary process is important as it ties down the activities to estimates that are reflected in the annual Provincial Budget. The Provincial Treasurer incorporates estimated costing to all the activity items tying down the Provincial Plan to the Budget.

It is common practice for the Provincial Treasury to include in the current budget, snapshots of the previous year's budget in order to get an accurate estimate of what was spent and what was unspent.

However, during his interview Mr. Simon Simoi, Director, Planning & Co-ordination Division, revealed that since 2012, the Madang Provincial Government did not have a Provincial Plan on which to base their expenditure on.

Mr. Simoi stated that since there was no Provincial Plan, funds were not tied down to any plan or activity at the Provincial level. Hence, the Provincial Government and the Provincial Administration on many occasions overspent on unbudgeted activities. Sections 105 and 105A of the Organic Law on Provincial Governments and Local Level Governments state:

105 Financial Responsibility

(1) Subject to this Organic Law and other Constitutional Laws, a province shall exercise full autonomy within the powers and functions as provided for in this Organic Law including financial responsibility.

(2) An Act of the Parliament shall make provision for the details of financial autonomy of a Provincial Government and a Local-level Government.

#### 105A Financial Responsibility

(1) For each fiscal year there shall be a Provincial Government and a Local-level Government Budget comprising—

(a) estimates of—

(i) finances proposed to be raised; and  
(ii) expenditure proposed for the provincial and district administration; and  
(iii) expenditure proposed for the rural services; and  
(iv) expenditure proposed for the urban services; and

(b) appropriation for the services of that year in respect of Subsection (1); and

(c) such other supplementary Budgets and Appropriations as are necessary.

(4) If, at the beginning of a fiscal year, the Provincial Government and Local-level Government have not made provision for public expenditure for their respective services for that year, the Provincial Executive Council and Local-level Government, as the case may be, may, without authorization other than this Section but in

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accordance with an Act of the Parliament, expend amounts appropriated out of the General Revenue Fund for the purpose not exceeding in total one-third of its respective budgeted expenditure during the immediately preceding fiscal year.

The Commission noted that the Madang Provincial Government Appropriation Act 2014 passed by the Provincial Assembly in 2014 contradicted the Organic Law on Provincial Governments and Local Level Governments and the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013). In particular Sections 4 and 5 of the Appropriation Act 2014 state:

#### 4. EXPENDITURE IN EXCESS OF APPROPRIATION:



(1) Where and when insufficient appropriation exists in the estimate to meet expenditure under an item, the Chairman, upon the recommendation from the Chief Accountable Officer may direct that the expenditure shall be met by transferring appropriation from another item within the same activity.

(2) Where insufficient appropriation exists in an estimate to meet an expenditure under an activity, the Chairman, upon recommendation from the Chief Accountable Officer, may direct that the expenditure shall;

(a) Be met by transferring an appropriation from another activity within the same head of programme or

(b) Be charged against the same activity by transferring from the activity entitled –Administrator’s Advancell (unforeseen expenditure) for appropriations under Section 2(3) and (4) and changed, partially in accordance with Section 5(2).

(c) Where insufficient appropriation exists in the estimate to meet expenditure under a main programme, the Chairman, may authorize the transfer of money from one main programme to another of in his opinion it is expenditure to do so, subject to Section 5(1) and (2) of this Act, for appreciation under Section 2(3) and (4).

#### 5. EXPENDITURE NOT PROVIDED FOR:

(1) Where no appropriation exists in the estimate to meet expenditure, the expenditure shall be charged against the activity entitled –Administrator’s Advancell upon approval by the Chairman of Finance.

(2) Where no appropriation exists in the estimate to meet expenditure under a main programme, the Chairman may authorize transfer of money from one main programme to another programme if in his opinion, it is expedient to do so, subject to Section 5(1) of this Act.

(3) Where a –Change of Scopell is requested in the estimate the Chairman may authorize the expenditure upon endorsement by the Provincial Assembly after recommendations from

the Provincial Executive Council.

Sections 4 and 5 of the Appropriation Act 2014 are inconsistent with Section 105A (4) of the Organic Law on Provincial Governments and Local Level Governments which states:

105A. Financial responsibility.

(4) If, at the beginning of a fiscal year, the Provincial Government and Local-level Government have not made provision for public expenditure for their respective services for that year, the Provincial Executive Council and Local-level Government, as the case may be, may, without authorization other than this Section but in accordance with an Act of the Parliament, expend amounts appropriated out of the General Revenue Fund for the purpose not exceeding in total one-third of its respective budgeted expenditure during the immediately preceding fiscal year.

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The Provincial Executive Council (PEC) was not involved in approving the transfer of appropriation from one item to another. The Chairman of the Provincial Finance and Planning, who in this case is the Hon. Jim Kas, then MP, Governor, was mandated to approve all the movement of funds from one item to another or in some cases movement of funds to fund unbudgeted activities. One such unbudgeted activity was the purchase of the 19 motor vehicles.

An analysis of the budget indicated that there was a rollover of K100,000 as unspent LLGSIP funds from 2013 to 2014 in accordance with the Appropriation Act 2014 and Financial Instruction 1B(8) of 2010. The rollover funds were in addition to the LLGSIP of K9.5 million as outlined below:

Code	Description	Actual
Appropriation		2012
2013	2014	
	(Public Investment Programme)	1,750.0
90,000.0	90,000.0	
	Madang Provincial Government MNDG	1,750.0 0.0

0.0			
113/6	Transport/Infrastructure Maintenance Grant	7,571.6	
8,363.4	11,600.8		
118/2	District Support Improvement Program–Madang	0.0	
60,000.0	60,000.0		
117/1	Provincial Support Improvement Program–Madang	0.0	
30,000.0	30,000.0		
	LLG Grants	3,563.9	
13,371.4	13,798.6		
114/7	LLG Grants	3,563.9	
3,871.4	4,298.6		
118/5	LLG Service Improvement Program	0.0	
9,500.0	9,500.0		
2013	Roll Over Grants	2012	
2013	2014		
120/4	Transport Infrastructure	1,581.1	
1,312.5	1,731.7		
120/12	LLG Grant	0.0	
558.0	890.2		
120/14	LLG SIP	0.0	0.0
100.0			

An analysis of the Madang Provincial Government’s Appropriation Act 2014 revealed that there were no specifically allocated funds for the refurbishment of the Provincial Government vehicle fleets.

The Commission’s investigation revealed that the Provincial Government Budget for the years 2012 and 2013 did not contain any estimates to indicate whether or not there was any funding allocated for this activity. Then in 2014, the Provincial Government allocated funds under the DSIP and LLGSIP as indicated in the above tables.

The Commission investigation also revealed that the Provincial Government, together with the Provincial Administration and Provincial Treasury had applied the wrong and outdated Financial Instruction. That is, under Section 117 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013), the Department of Finance issues Financial Instructions under the hand of the Secretary for the Department of Finance to enable the facilitation of funds to rollover to the next fiscal year in order to complete outstanding projects.

Then Hon. Governor stated under Oath during his interview that he told all the 19 Presidents who were present during the JPP&BPC that he would

purchase vehicles for all the 19 Presidents. The Hon. Governor further stated that the funding would come from his PSIP funds. He further stated that the source of funding for the purchase of the vehicles would be from his PSIP funds. However, analysis of the JPP&BPC Decision No.01/02/2014, made in Meeting No.01/2014 revealed that the JPP&BPC approved for K100,000.00 to be taken out from the LLG funds to go toward the purchasing of the vehicles.

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However, the Commission's investigation revealed that the funds that were used to purchase the 19 vehicles were not from the Governor's component of the PSIP funds, but from the DSIP and LLGSIP. This was also confirmed when he stated during the JPP&BPC Meeting No.01/2014, each of the Presidents contributed K100,000.00 to purchase the other vehicles.

The Commission's investigation also revealed that then Hon. Governor, misled the Members of the JPP&BPC by stating that the 19 motor vehicles would be purchased from his component of the PSIP funds. The decision to purchase the motor vehicles was made outside of the Madang Provincial Government's Appropriation Act 2014. Hence, this was an unbudgeted activity.

The Commission's investigation also revealed that the Madang Provincial Government passed an Appropriation Act that was contradictory to the intentions of Section 187C(4) of the Constitution, Sections 105 and 105A of the Organic Law on Provincial Governments and Local Level Governments, the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and the Financial Instruction No.01/2013.

The Commission's investigation further revealed that the Code 283-2063-8901-135 that was used by the Provincial Administration indicated the following:

- 283 mean that the funds were from the Madang Provincial Government.

- 8901 means that the funding is derived from the DSIP.
- 135 means that all SIP funds are categorized and itemized under the PGAS expenditure.

Therefore, this further confirmed that the funding of the purchase of the 19 motor vehicles was not from the Hon. Governor's PSIP funds but from the DSIP and LLGSIP funds.

[2.8] JOINT PROVINCIAL PLANNING & BUDGET PRIORITY COMMITTEE  
MEETING DECISION No. 01/02/2014

On 1 January 2013, Mr. Paul Sai'i, then Secretary, Department of Implementation and Rural Development approved and released the Department's PSIP, DSIP and LLGSIP Administrative Guidelines. Below is an extract of the Guidelines:

Section 4 Sectorial Development Funds Allocation and Disbursement  
4.10 Funding to Provinces, Districts and Local Level Governments aims to empower effective participation to diversify the economy and expand productive base, thereby improving livelihoods.

4.11 NEC Decision NG 102/2012 of 30 October 2012 directed the PSIP, DSIP and LLGSIP funds be broken down into the following six (6) sectors:

- 30% Infrastructure Services Support;
- 20% Health Services Improvement;
- 20% Education Services Support;
- 10% Law & Justice Services;
- 10% Economic Sector Support; and

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- 10% Administration.

The NEC Decision approved the increase in current Administrative Fees from 3.0% up to 10.0% of the total Appropriation. This 10% is to be broken down into the following categories:

- 3% General Administration Component for Administration Support including Joint Provincial/District Planning and Budget Priority Committees (JPP&BPCs and JDP&BPCs) and Provincial Project Management Team (PPMT), District

Project Management Team (DPMT);

- 3% Support Fund for travel and project and project identification and monitoring activities by the Chairperson of JPP&BPC, Chairperson of JDP&BPC and the LLG Council Chairperson or their delegates; and

- 4% Project Scoping and Mobilization Costs and related activities by PPMT, DPMT and PWU as defined in Project Identification Documents (PID), Project Formulation Documents (PFD) approved by JPP&BPC and JDP&BPC for scoping and implementation, respectively;

4.12 Disbursement of Funds is upon availability of Cash Flow Statement and funding on a quarterly basis.

4.13 Funds for PSIP, DSIP and LLGSIP may be moved from one priority section to another except for Administration component, provided that the following conditions are met:

- There must be JPP/JDP&BPC/LLG Council approval in line with 5 Year Development Plan;
- This/these must be justified in a letter to the Minister of Planning;
- Minister of Planning assesses and may/may not approve the submission in consultation with DIRD and DoF Secretaries.

On 2 March 2014, the Madang JPP&BPC held its Meeting No.01/2014 held in the Hon. Jim Kas, then MP, Governor's Office. In its Resolution No.01/02/2014, it resolved for K2 million to be approved to purchase motor vehicles for the 19 LLGs. The motor vehicles were to be registered under Madang Provincial Government and the vehicles were to be coordinated by Madang Provincial Administration.

#### Comments

The Commission's investigation revealed that there was a JPP&BPC meeting held in the Hon. Governor's office in Madang Province on Sunday 2 March 2014 at 3:55pm. The

Meeting was attended by all the LLG Presidents, an Appointed Representative and Mr. Lange, who represented the Provincial Administration as the Chief Executive Officer of the Committee. Those present at the Meeting No. 01/2014 were:

## 2.0 MEMBERS PRESENT

(i) Hon. Jim Kas, MP Province & Chairman	- Governor Madang
(ii) Hon. Anton Yagama, MP Bundi & Deputy Chairman	- Member for Usino/
(iii) Hon. Joe Maira, MPA Arabaka LLG	- President -
(iv) Hon. Peter Bariaiu, MPA LLG	- President - Yawar
(v) Hon. Joe Y. Yama, MPA	- Mayor - MULLG
(vi) Hon. Samuel Nessau, MPA Rawa LLG	- President Naho-
(vii) Hon. Elijah Kas, MPA LLG	- President - Gama
(viii) Hon. Andrew Mapio, MPA Representative - CSO	- Appointed
Mr. Bernard Lange Administrator, Chief Advisor (CEO)	- Provincial

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## OBSERVERS

(ix) Hon. Rama Marisan, MPA President- Sumgilbar LLG	- Deputy Governor-
(x) Hon. Amili Deide, MPA Astrolabe Bay LLG	- President -
(xi) Hon. Erick Pekah, MPA Almami LLG	- President -
(xii) Hon. Martin Ururu, MPA LLG	- President - Iabu
(xiii) Hon. Nasare Lato, MPA Ambenob LLG	- President -
(xiv) Hon. Bernard O. Koita, MPA Transgogol LLG	- President -
(xv) Hon. Anton Karukai, MPA Josephtaal LLG	- President -
(xvi) Hon. Joseph Guasilu, MPA LLG	- President - Usino
(xvii) Hon. Joseph Dimiang, MPA LLG	- President - Kovon
(xviii) Hon. Nathan Kolai, MPA Simbai LLG	- President -

(xix) Hon. Baza Yowa, MPA	- President -
Nayudo LLG	
(xx) Hon. Roy Anir, MPA	- President -
Raicoast LLG	
(xxi) Hon. Ben B. Naing, MPA	- President -
Karkar LLG	
(xxii) Hon. Victor M. Kavare, MPA	- President - Bundi
LLG	

The composition of the JPP&BPC was contrary to Section 25(2) of the Organic Law on the Provincial Governments and Local Level Governments which states that:

25. Provincial Executive Council Committees.

(2) The Joint Provincial Planning and Budget Priorities Committee shall consist of -

(a) a member of the Provincial Executive Council appointed by the Governor, who shall be the Chairman; and

(b) the Chairman (or his nominee) of each District Development Authority; and

(c) any other members not exceeding three in number appointed, on an ad hoc basis, the Provincial Executive Council.

The Commission's investigation also revealed that the JPP&BPC composition was made up of politicians and one public servant. There was no Chairman from the other five JDP&BPC present in the meeting, therefore there was no quorum

The Commission's investigation also revealed that then Hon. Governor told the members of the JPP&BPC that he had allocated the PSIP funds into the following sectors:

3.1.1 Governor's Decision for the PSIP as follows:

Infrastructure	-	62%
Education	-	18%
Health	-	4%
Agriculture	-	3%
Law & Justice	-	3%
Administration	-	3%
General Administration	-	3%
Electoral	-	3%

The decision by then Hon. Governor, to allocate the PSIP funds as indicated above was



contrary to the NEC Decision No. 102/2012 of 30th October 2012. That is, the PSIP, DSIP and LLGSIP funds to be allocated in the following six (6) sectors:

- 30% Infrastructure Services Support;
- 20% Health Services Improvement;

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- 20% Education Services Support;
- 10% Law & Justice Services;
- 10% Economic Sector Support; and
- 10% Administration.

The Commission's investigation further revealed that the JPP&BPC decision to purchase the vehicles was made after then Hon. Governor, informed those who were present in the meeting that:

#### 4.0 LLG PRESIDENTS VEHICLES – K2.0 MILLION

The Chairman informed the Members that the Provincial Government, through the Governor's PSIP will purchase official vehicles for all the Presidents that is K100,000.00 per president.

He also mentioned that this is a package and it is up to individual presidents to use their own funds to purchase other vehicles.

Then Hon. Governor, directly informed those present in the meeting that all 19 LLG Presidents would each receive their motor vehicles and this would be deducted from the Governor's PSIP Grants.

In order to honour this commitment, the Madang Provincial Administration also diverted funds from the DSIP Grants apart from the LLGSIP Grants.

#### [2.9] PURCHASE OF 19 MOTOR VEHICLES FOR THE 19 LOCAL LEVEL GOVERNMENT PRESIDENTS

On 6 March 2014, Mr. Lange, approved Financial Directive No.1/2014: Appointment of Authorized Requisition Officers, Financial Delegates and Section 32 Officers under 283 series.

On 13 March 2014, Mr. Thomas Warr, the Authorised Requisition Officer raised a

Requisition for Expenditure Form requesting for K1,968,612.61 to be released to pay for 19 motor vehicles for the 19 LLG Presidents. Mr. Lange, then Provincial Administrator and Section 32 Officer approved it while Mr. Dunstan as the Financial Delegate, approved the General Expenses Form and committed the funds.

On 26 March 2014, Mr. Dunstan wrote to Mr. Saul and advised that both Mr. Pasum, as the Authorized Requisition Officer, Office of the Governor, Madang Province and himself were signatories to 783 and 283 series of funds activities.

#### Comments

Mr. Dunstan signed documents as the Financial Delegate, however he did not write down his Cash Fund Certificate number as Financial Delegate. This Cash Fund Certificate number would have identified his financial delegation authority. This means that he did not have the financial delegation to sign off on the requisition forms and the general expenses forms because his limit for financial delegation was only K2,000.00 as per the Financial Directive No.2/2013.

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#### [2.10] AUTHORITY TO PRE-COMMIT (APC)

On 14 April 2013, the National Parliament passed the amendments to Section 47B of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013). These amendments increased the kina threshold amount for the Authority to Pre-Commit (APC) expenditure from K300,000 to K500,000 at the Provincial level.

#### Comments

The Financial Instructions states that the purpose of an APC is to ensure proper accounting, management and reporting is maintained on the Pre-Commitment of Expenditure at all levels of the National, Provincial and Local-Level Governments.

The Commission's investigation revealed that there was no APC issued

by the Provincial APC Committee to commit the funds needed to fund the activity as required under Section 47B of the Public Finance (Management)(Amendment) Act 1995 (No.4 of 2013).

47B. Authority to Pre-commit Expenditure.

(1) The Departmental Head of the Department responsible for financial management may issue to a Departmental Head an Authority to Pre-commit Expenditure in relation to the purchase of property or stores or to the supply of goods or services where the Departmental Head of the Department responsible for financial management is satisfied that-

(a) in the case of proposed expenditure exceeding K100,000.00-

(i) the provisions of this Part have been complied with in relation to the purchase or

supply; and

(ii) funds will be available to meet the proposed schedule of payments for the

purchase or supply; and

(b) in the case of proposed expenditure not exceeding K500,000.00, the circumstances of the proposed expenditure are such that it is appropriate to authorize the Department,

to the Departmental Head of which the Authority to Pre-commit Expenditure was

granted, to enter into a contract for the purchase of property or stores or for the supply of goods or services notwithstanding that the full amount of funds to meet the

payment required under the contract is not immediately available but it is within the

appropriation for the year to which the Authority to Pre-commit Expenditure relates

for the item to which it relates.

(2) An Authority to Pre-commit Expenditure under Subsection (1) shall specify-

(a) the purchase of property or stores or the supply of goods or services to which it relates; and

(b) the maximum amount to which the Authority extends.

(3) Subject to Subsection (4), an Authority to Pre-commit expenditure under Subsection (1)

authorizes the execution, in accordance with and subject to compliance with the procedures

specified in this Part, of a contract for the purchase of property or stores or for the supply of goods and services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority.

(4) A contract under Section 47 shall not be entered into unless—

- (a) an Authority to Pre-commit Expenditure under Subsection (1) relating to the contract has been issued; and
- (b) all other requirements of this Part relating to the contract have been complied with.

The Commission's investigation also revealed that Mr. Lange did not conduct due diligent checks to ensure that all appropriate and authorised persons had signed on the documents

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as outlined in Section 5(a),(b),(c),(d),(e) and (f) of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) below:

#### 5. Responsibilities of Heads of Departments.

(1) Each Departmental Head is responsible for ensuring that, in relation to the Department of which he is Head—

- (a) the provisions of this Act are complied with; and
- (b) all accounts and records relating to the functions and operations of the Department are properly maintained; and
- (c) all necessary precautions are taken to safeguard the collection and custody of public moneys; and
- (d) all expenditure is properly authorized and applied to the purposes for which it is appropriated; and
- (e) there is no over commitment of funds and a review is undertaken each month to ensure that there is no over-expenditure or over commitment and the collection of public moneys is according to approved plans and estimates; and
- (f) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste; and

On 3 April 2014, Mr. Lange wrote to the Provincial Supply & Tenders Board (PSTB) members and advised them of their fifth meeting of 2014 that was scheduled for 1:30pm on Monday 7 April 2014.

On 7 April 2014, Mr. Lange, as then Chairman for the Madang PSTB certified the PSTB Special Meeting No.05/2014 and Decision No.04/05/2014, where it endorsed the JPP&BPC Resolution No.01/02/2014 to purchase 19 motor vehicles from Ela Motors Ltd as the only supplier for K2 million.

#### Comments

Then Hon. Governor stated during his interview that the source of funding for the purchase of the vehicles was from the PSIP. In order to fulfill this political commitment, several activities should have taken place in order to facilitate this commitment as outlined below.

1. The JPP&BPC to meet in order to formalize this political commitment. The JPP&BPC decision should specify how much will be allocated in order to purchase vehicles and from where these funds will be derived.
2. A Technical Evaluation Committee (TEC) should have assessed all bids and quotations and provide technical advice to the PSTB through a report for the Top Management Team to consider.
3. The Top Management Team to approve a draft list of vehicles made on 11 February 2013 for the Provincial Administration to purchase 28 motor vehicles. This report becomes part of the TEC report will be submitted to the PSTB.
4. Since the amount is above the K5,000.00 an APC form is filled by the originating office and submitted to the Provincial APC Committee. It is the role of the Provincial APC Committee to identify monies to fund the project.

5. The APC form is returned to the Office of the Governor and the Finance Forms are attached and submitted to the Office of the Provincial Treasurer to process the payment.

6. Upon establishing the funding of the project, the PSTB meets and calls for an open tender on the contract. Inviting Bidders to bid for the contract. The bids are collected by the TEC and evaluated.

7. The TEC produces a report with recommendations and submits it to the PSTB to deliberate on.

8. The PSTB then deliberates on the TEC report and makes a decision to award the contract on the project to the successful Bidder.

9. Upon receipt of the PSTB decision, the Provincial Administration and the Office of the Governor for Madang Province then raises the Requisition for Expenditure Form and the General Expenses Form. These Finance Forms must have the authorized financial delegate signatures on them to validate them.

10. The Provincial Administrator upon assessment of the Finance Forms and satisfied that the process had been complied with in accordance with the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) approves the payment as the Section 32 Officer.

The process described above was not followed because the Provincial Administration made a list of motor vehicles to be purchased and that list was forwarded to the Office of the Governor to be formalized and processed.

The Commission's investigation revealed that the manner in which the payment voucher for the purchase of the vehicles was made was highly irregular. That is, Mr. Dunstan, whose Financial Delegation was K2,000 endorsed and approved the Requisition for Expenditure Form and the General Expenses Form.

The Commission noted that the PSTB's decision to endorse and facilitate the JPP&BPC's Resolution No.01/02/2014 was highly irregular as the payment and purchase of the 19 motor

vehicles had already taken place.

The Commission's investigation also revealed that there was no TEC report that the PSTB could consult in order to make a decision. In this case, the Provincial Government and the Administration purchased the vehicles before going back to comply with the procurement process. Section 40(1)(b) of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) which states:

40. Tenders for property, stores, works and services.

- (1) Subject to—
  - (a) this section; and
  - (b) Section 41,

Tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

(2) In relation to the purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

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### 3. FINDINGS

#### [3.1] FINDING No. 1

In the opinion of the Ombudsman Commission the Madang Provincial Government Appropriation Act 2014 was defective as it was developed contrary to the intent of the Constitution and contradicted the Organic Law on the Provincial Governments and Local Level Governments and the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013).

Reasons

1. On 16 January 2014, the Madang Provincial Government passed the Appropriation Act 2014 outlining the Provincial Government's estimates for the year 2014. However, evidence shows that the process that should have been followed leading up to the compilation of the Provincial Budget was not complied with.

Section 187C (4) of the Constitution and Section 106 of the Organic Law on Provincial Governments and Local Level Governments states:

187C. Constitution, functions, etc., of Provincial Governments and Local-level Governments.

(1) Subject to this Part, an Organic Law shall make provision in respect of the constitution, powers and functions of a Provincial Government or a Local-level Government.

(4) An Organic Law shall make provision for and in respect of-

(a) grants by the National Government to Provincial Governments and Local-level Governments; and

(b) subject to Subsection (4A), the imposition, collection and distribution of taxation by Provincial Governments and Local-level Governments,

and may make other financial provisions for Provincial Governments and Local-level Governments, to an extent reasonably adequate for the performance of their functions.

Section 106 of the Organic Law on Provincial Governments and Local Level Governments which state:

106. Provincial Planning and Data System.

(1) There shall be established in each province an extended service of the Department responsible for planning matters and of the National Statistical Office.

(2) The functions of these services are to establish and maintain an effective and efficient provincial and local-level planning and data system.



Hence, the Appropriation Act 2014 and the Provincial Budget were done outside of the normal budgetary process which included the formulation and compilation of plans to tie the budget down.

2. Sections 4 and 5 of the Appropriation Act 2014 contradicted Section 105A (4) of the Organic Law on Provincial Governments and Local Level Governments when it empowered and authorized the Chairman of the Provincial Assembly and the PEC to transfer funds from one appropriation to another, instead of the PEC having that authority.

3. There was no evidence to state that the Madang Provincial Government and the Provincial Administration had complied with Financial Instruction No.01/2013.

However, the Appropriation Act 2014 did state that it had complied with Financial Instruction 1B(8) of 2010, which was superseded by Financial Instruction No.01/2013.

4. The Chairman of the Provincial Assembly and the PEC does not have the authority to transfer funds from one item to another. This responsibility of appropriation lies with the PEC, Secretary for Department of National Planning and Monitoring, Department of Treasury and Department of Implementation and Rural Development.

#### Reference

The facts relevant to this finding are on Pages 7 – 10, 12 – 21 and 34 – 35 of Chapter 2.

#### RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No. 1:

My Response: I totally disagree and categorically deny that Madang Provincial

Government Appropriation Act 2014 was defective and developed contrary to the intent of the Constitution and the Organic Law on Provincial and Local Level Government Act and Public Finance (Management) Act 1995. Appropriate Bills are made to guide and manage the passage of the budgets throughout the course of the year, particularly transfer and revisions of the funding through quarterly reviews. It makes the budget flexible to unforeseen events.

Your suggestion that the Appropriation Act is illegal is defamatory and malicious. It has been that way and in that form for long time without being criticized by either; the Auditor General's Office, the Provincial and Local Government, the National Economic and Fiscal Commission nor the Department of Treasury.

#### Comments

The Commission noted Mr. Lange's response to Finding No.1.

However, the Commission's original comments on Finding No.1 contained in its Provisional Report remain unchanged.

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#### [3.2] FINDING No. 2

In the opinion of the Ombudsman Commission the conduct of the Hon. Jim Kas, then MP, Governor, was wrong when he informed the Joint Provincial Planning and Budget Priority Committee that he would fund the purchase of the motor vehicles for all LLG Presidents using the Governor's PSIP Grants.

#### Reasons

1. During the JPP&BPC Meeting No.01/2014 which was attended by all

elected and appointed members of the Provincial Assembly, then Hon. Governor made a political commitment. It was also in this meeting that he stated that K100,000.00 would be taken out from each of the DSIP funds and the PSIP funds to fund the purchase of the 19 motor vehicles.

2. This was improper as then Hon. Governor did not have the power or authority to divert or transfer funds from one appropriation to another. This power and authority lies with the Provincial Government.

3. In 2013 and 2014, the Provincial Government did not allocate any miscellaneous funds in its respective budgets to cater for any political commitments by then Hon. Governor made. However, due to this policy decision, the Provincial Administration was pressured to divert funds to cater for then Hon. Governor's political commitment.

4. The action of the Provincial Administration was in line with the Madang JPP&BPC Resolution No.01/02/2014, made in Meeting No.01/2014 in the Office of the Governor for Madang Province. In this case, funding for this unbudgeted activity came from the DSIP funds and the LLG SIP funds contrary to the original intention of the funds.

5. In addition to this, then Hon. Governor misled the Presidents of the 19 LLGs that funding for the purchase of the vehicles would come from his component of the PSIP funds, when in actual fact the funding came from the DSIP funds and the LLGSIP funds.

#### Reference

The facts relevant to this finding are on Pages 7 – 10, 11 – 21 and 34 – 45 of Chapter 2.

#### RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No. 2:

My response: Hon. Jim Kas, MP, Governor's conduct was made in the context of economy of costs and it was sensible and rational decision. Moreover, the Transport cost to Madang Provincial Government for the 19 Presidents to attend Assembly and Provincial Executive Council and Committee Meetings would be about K50, 000 per President per year or K950, 000. In 5 years it will cost K4, 750,000. The Governor's decision would save the Government approximately K3,000,000.

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Additionally, the Presidents' official duties must be perceived as; visiting their people in their respective wards, the vehicles were in various situations also used as ambulances and/or vehicles to assist the sic or assist with health issues, assist the Police in law and order problems, and assist Public Servants in their various official duties, when vehicles of those sectors were not available to provide transportation for the public servants to deliver those various Government services to the people.

Furthermore, Transport Infrastructure component of the PSIP was the intended cost area against which the expenditure, being 20% of the total, K6.0m for the entire province.

Comments

The Commission noted Mr. Lange's response to Finding No.2.

However, the Commission's original comments on Finding No.2 contained in its Provisional Report remain unchanged.

[3.3] FINDING No. 3

In the opinion of the Ombudsman Commission there was no proper quorum for the Madang Joint Provincial Planning and Budget Priority Committee to convene as its composition was not in compliance with Section 25(2) of the Organic Law on the

Provincial Governments and Local Level Governments.

#### Reasons

1. On 2 March 2014, the Madang JPP&BPC in its Meeting No.01/2014, then Hon. Governor informed those present in that meeting that all 19 LLG Presidents would be given vehicles.
2. The JPP&BPC meeting was attended by the LLG Presidents, two Open Members of Parliament and then Provincial Administrator.
3. The Chairmen for each of the District Development Authority, or their nominees were not present in the meeting as is required in Section 25(2) of the Organic Law on the Provincial Governments and Local Level Governments.

-25. Provincial Executive Council Committees.

(2) The Joint Provincial Planning and Budget Priorities Committee shall consist of –

(a) a member of the Provincial Executive Council appointed by the Governor, who shall be the Chairman; and

(b) the Chairman (or his nominee) of each District Development Authority; and

(c) any other members not exceeding three in number appointed, on an ad hoc basis, the Provincial Executive Council.

#### Reference

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The facts relevant to this finding are on pages 7 – 10, 15 – 21 and 45 – 48 of Chapter 2.

#### RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No. 3:

My Response: That is very true, however, in my experience as the Provincial

Administrator and Chief Advisor to three different Governors of Madang Province from

2010 – 2014. Former Governor Sir Arnold Amet from 2010 – 2011, former Governor and

current Open Member for Raicoast Hon. James Gau, MP from 2011 – 2012 and current

Governor Hon. Jim Kas, MP from 2012 – 2014, it was very difficult to have a full quorum (6 x

Open Members) of the JPP & PBC Members.

5 x Open Members of Parliament hardly attended Provincial Assembly Meetings and JPP &

BPC Meetings, despite being issued notices. Compliance with the Organic Law in that

respect can never be satisfied for the entire term of Parliament.

#### Comments

The Commission noted Mr. Lange's response to Finding No.3. However, the Commission's original comments on Finding No.3 contained in its Provisional Report remain unchanged.

#### [3.4] FINDING No. 4

In the opinion of the Ombudsman Commission the decision by the Joint Provincial

Planning and Budget Priority Committee to award the contract for the supply of the

19 motor vehicles to Ela Motors Ltd was wrong.

#### Reasons

1. The Organic Law on the Provincial Governments and Local Level Governments clearly states the

functions of the Joint Provincial Planning and Budget Priority Committee under

Section 25(3) that:

The Joint Provincial Planning and Budget Priorities Committee shall have the

following functions: –

(a) To oversee, co-ordinate and make recommendations as to the overall planning in

the province, including budget priorities, for consideration by the National Government; and

(b) To determine and control budget allocation priorities for the Province; and

(c) To approve Provincial Government Budgets for presentation to the Provincial Assembly; and

(d) To draw up a rolling five-year development plan and annual estimates for the Province; and

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(e) To conduct annual reviews of the rolling five-year development plan.

2. The JPP&BPC's functions were not adhered to in this instance when those present

unanimously accepted then Hon. Governor's statement that all 19 LLG Presidents were going to receive their motor vehicles.

3. The JPP&BPC's function does not include performing the functions of the Provincial

Supply & Tenders Board. In this case the members of the JPP&BPC resolved and

awarded the contract to Ela Motors Ltd because it was the only supplier in Madang of the types of motor vehicles they wanted.

4. Due to the political commitment made by then Hon. Governor, to purchase the motor

vehicles he had to source the funds from the Provincial Services Improvement Program.

Reference

The facts relevant to this finding are on pages 7 – 10 and 45 – 48 of Chapter 2.

RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract of his response in regard to Finding

No.4:

My Response: I believe that decision was not wrong, because the Ela Motors Ltd is the only supplier of motor vehicles, with a workshop and genuine spare parts sales office in Madang Province. The 3 quote procurement requirement could not be strictly adhered to, because no other vehicle supplier is based in Madang, so going outside the province has limitations and costs that unnecessary.

The Madang Provincial Government and its administrative agencies rely on Ela Motors Limited as the sole supplier of genuine Toyota Products that are durable, long lasting and reliable. This practice is likely to continue over the years to come.

Comments

The Commission noted Mr. Lange's response to Finding No.4.

However, the Commission's original comments on Finding No.4 contained in its Provisional Report remain unchanged.

[3.5] FINDING No. 5

In the opinion of the Ombudsman Commission the appointment of Mr. Augustine Dunstan as First Secretary to the Governor and Financial Delegate was improper.



## Reasons

1. There was no documentation indicating that the Prime Ministerial appointed Mr. Dunstan as First Secretary to the Governor.
2. In fact the Official Personal Staff Act does not state that Provincial Governors are entitled to personal staff. However, the Salary Remuneration Committee Determination Schedule G007-18 did state that Provincial Governors are entitled to one personal staff.
3. During his interview Mr. Dunstan stated that he was recruited by then Hon. Governor as First Secretary. Hence, it was then Hon. Governor and not the Prime Minister who appointed Mr. Dunstan.
4. Therefore, it was improper for Mr. Dunstan to have endorsed or approved any requisition or Cheque for any payment on behalf of the Office of the Governor or for the Provincial Administration.

## Reference

The facts relevant to this finding are on pages 7 – 10 and 25 – 33 of Chapter 2.

## RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No.5:

My Response: I am unable to see any rational for officers of the Governor not to be appointed as Financial Delegates. In my opinion; Financial Delegates are managers of Programs and Activities that are budgeted for a specific office in a Financial Year, and like other Sector Managers, the First Secretary (Mr Augustine Dunstan) administers, coordinates and manages the office of the Governor.

Unless Ombudsman Commission can demonstrate the harm that such an appointment can cause to the management of finances in the province, I do not

agree with your view.

Additionally, Appointing an Officer of the Secretariat as Financial Delegate/Fund Manager to Governor's Office and the JPP & BPC has had limitations, because they are not required to be presented in all programs and activities of the Governor's Office. It has created –bottle neckll situations and impacted efficiency in the Governor's Office operations.

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The Commission noted Mr. Lange's response to Finding No.5. However, the Commission's original comments on Finding No.5 contained in its Provisional Report remain unchanged.

#### [3.6] FINDING No. 6

In the opinion of the Ombudsman Commission the conduct of Mr. Augustine Dunstan, the First Secretary to the Governor, in signing the Request for Expenditure Form and General Expenses Form was wrong because he did not have the Financial Delegate.

Reasons

1. On 17 February 2014, the Provincial Administration issued a Financial Directive No.2/2014 that outlined all Authorised Requisition Officers, Financial Delegates and Section 24 Officers with their financial limits.
2. Mr. Dunstan's financial delegation was K2,000.00 and no more. In this case, he was authorised to sign off on all Requisition for Expenditure Form or General Expenditure Form within his financial limit.
3. However, Mr. Dunstan signed off on two sets of Requisition for Expenditure Forms and General Expenses Forms, that is, one set was raised on 27 March 2013 for

K1,415,400.00 and the other set was raised on 13 March 2014 for K1,968,612.61.

4. In both cases the amounts were above his financial delegation

5. On Tuesday, 17 November 2015, during his interview with the Officers of the

Commission, Mr. Dunstan, stated that he was well aware of his financial limits and yet he ignored this fact and went ahead with signing off on the Requisition for Expenditure Forms and General Expenditure Forms.

6. Mr. Dunstan understood that what he did was not in compliance with the Public

Finance (Management) (Amendment) Act 1995 (No.4 of 2013), but because it was a

commitment that then Hon. Governor had made and then Hon. Governor was

determined to have the motor vehicles purchased for the 19 LLG Presidents.

#### Reference

The facts relevant to this finding are on page 5 – 6, 7 – 10, 26 – 33 and 48 – 49 of Chapter 2.

#### 1. RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No.6:

My Response: Ombudsman Commission opinion is not supported by factual legal provision of the law and therefore that opinion cannot be discussed.

Moreover, the First Secretary to the Governor was appointed the Financial Delegate of

Governor's Office Operating Funds; under the 783 Series and JPP & BPC Funds und 283

Series as per Financial Directive No: 1/2014 and 2/2014; issued under my hand as Chief

Accountable Officer. My power of delegation is vested under Section 100 of the PFMA.

## 2. RESPONSE FROM MR. GABRIEL SAUL

On 18 March 2017, Mr. Saul responded to the Commission's Provisional Report that was issued on 16 March 2017. Below is an extract of the letter in regard to the Executive Summary:

- Point 6 (page 1)...not sighting as stated in the report, but signing of the General Expenses Form (FF4) by Mr Dunstan was in breach of Finance Instruction 01/2013 dated 1/1/2013.

### Comments

In regard to Mr. Lange's response to Finding No.6, the Commission has noted Mr. Lange's comments. However, the Commission's original comments on this particular Finding No. 6 as contained in its Provisional Report remains and it has not changed.

In regard to Mr. Saul's comments on Finding No.6 in the Provisional Report, the Commission has noted and taken on board Mr. Saul's correction of the word –sightingll as written in Principal Finding No.6 and also in the Executive Summary of the Provisional Report. Therefore, the word –sightingll has now been replaced with the word –signingll. This change has been incorporated into Finding No.6 and the Executive Summary of this Final Report.

### [3.7] FINDING No. 7

In the opinion of the Ombudsman Commission the Provincial Supply and Tenders Board's decision to award the contract for the supply of 19 motor vehicles to Ela Motors Ltd was wrong because the payments were done to Ela Motors Ltd prior to the PSTB's meeting and decision.

### Reasons

1. Section 40(1)(b) of the Public Finance (Management) (Amendment)

Act 1995 (No.4 of 2013)  
which states:

40. Tenders for property, stores, works and services.

(1) Subject to—

(a) this section; and

(b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

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(2) In relation to the purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

2. It was noted that at the time the contract for the supply of motor vehicles was awarded to Ela Motors Ltd, there did not exist a functional PSTB.

3. What should have happened then was for the Provincial Administration to conduct an open invitation to all interested suppliers to submit their bids.

4. The Technical Evaluation Committee would have collected and assessed all the Bidders and provided advice to the PSTB as to which supplier was the best with the lowest possible costing.

5. Due to the fact that this was public funds, the Provincial Authority to Pre-Commit Committee should have met and approved for K3 million to be released to fund the activity.

6. However, this was not the case as it was the Hon. Jim Kas, then MP, Governor's political commitment and there were no funds readily available at that time to implement the policy decision.

7. In fact, the Provincial Administration went ahead with the

raising of the payment  
vouchers and made payments to Ela Motors Ltd without complying  
with the tender and  
procurement procedures outlined in the Public Finance  
(Management) (Amendment) Act 1995  
(No.4 of 2013) and the Finance Management Manual.

#### Reference

The facts relevant to this finding are on Pages 7 – 10, 45 – 46 and  
50 – 52 of Chapter 2.

#### RESPONSE FROM MR. BERNARD LANGE

On 03 April 2017, Mr. Lange responded to the Ombudsman Commission's  
Provisional  
Report that was issued to him on 16 March 2017. Below is an extract  
of his response in  
regard to Finding No.7:

My Response: I admit that it was true that payment was done to  
Ela Motors Ltd prior  
to PSTB's meeting and decision. The main purpose for the meeting  
was to formalize the  
purchase done by the Office of the Governor for the 19 vehicle.

Additionally, Government funds were used for the purchase and the  
PSTB meeting was to  
ensure that the vehicles as being State properties; need to be  
recorded in our Asset Register  
for records purposes.

#### Comments

The Commission noted Mr. Lange's response to Finding No.7.

However, the Commission's original comments on Finding No.7  
contained in its Provisional  
Report remain unchanged.

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#### [3.8] FINDING No. 8

In the opinion of the Ombudsman Commission Mr. Bernard Lange, then  
Chairman of  
the Provincial Supply & Tenders Board's decision to award the  
contract for the supply

of 19 motor vehicles to Ela Motors Ltd was wrong because the payments were done to Ela Motors Ltd prior to the PSTB's meeting and decision.

#### Reasons

1. On 2 March 2014, the JPP&BPC made a decision for the Provincial Government to purchase motor vehicles only from Ela Motors Ltd. This decision was not proper as it did not allow for the normal and best practices in acquiring works, services or goods to take place.

2. Section 40 of the Public Finance (Management) (Amendment) Act 1995(No.4 of 2013) states that goods, works and services with a value greater than K300,000.00 are to be purchased through a public tender process. The public tender process provides the government with the best chance of obtaining value for money, transparency, effective competition, fair and ethical dealing and efficiency and effective 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.

In this case the amount for the project was over K300,000.00 and should have been advertised in at least two national newspapers and the relevant international media to attract the best bidders.

4. The Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) does not encourage selective tenders as they restrict the level of competition and it also makes the tender process not transparent and there is lack of accountability.

#### Reference

The facts relevant to this finding are on pages 7 – 10 and 48 – 51 of Chapter 2.

MR. BERNARD LANGE'S RESPONSE

On 03 April 2017, Mr. Lange responded to the Ombudsman Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No. 8:

My Response: My decision as the Chairman of the PSTB was not wrong, because my committee's (PSTB) decision was to formalize the purchase already done by the officers of the Office of the Governor. This is also in reference to in my above (3.7) Response.

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Comments

The Commission noted Mr. Lange's response to Finding No.8.

However, the Commission's original comments on Finding No.8 contained in its Provisional Report remain unchanged.

[3.9] FINDING No. 9

In the opinion of the Ombudsman Commission the conduct of Mr. Bernard Lange, then Acting Provincial Administrator was wrong when he failed to do due diligent checks on the Requisition for Expenditure Forms and General Expenses Forms that were filled on 13 March 2014 that enabled the processing of payment of K2,834,507.80 made to Ela Motors Ltd for the purchase of 19 motor vehicles.

Reasons

1. Mr. Lange failed to properly cross check the Financial Directive No.2/2014 that he issued on 17 February 2014, the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and Financial Instructions to ensure whether or not Mr. Dunstan or other officers had the proper authority to approve and sign off on the Requisition for Expenditure



Forms.

2. The field that requires for a Cash Fund Certificate number of the Financial Delegate to be written down was left blank. There was no Cash Fund Certificate issued with the Requisition for Expenditure Forms and General Expenses Forms.
3. The Cash Fund Certificate number is issued by the Provincial Treasurer after he has assessed the information on the Requisition for Expenditure Forms and General Expenses Forms.
4. Mr. Lange failed to sign the General Expenses Form dated 13 March 2014 as the Financial Delegate and Section 32 Officer.
5. The Financial Delegate who signed on the General Expenses Form dated 13 March 2014 was Mr. Dunstan who was not the appropriate officer.
6. Mr. Dunstan's actions went beyond his authority and limit when he signed off on the General Expenses Forms for the purchase of motor vehicles.

#### Reference

The facts relevant to this finding are on pages 5 – 6, 7 – 10 and 50 – 51 of Chapter 2.

#### 1. MR. BERNARD LANGE'S RESPONSE

On 03 April 2017, Mr. Lange responded to the Commission's Provisional Report that was issued to him on 16 March 2017. Below is an extract of his response in regard to Finding No.9:  
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My Response: I was not acting as the Provincial Administrator; I was the then Provincial Administration. Due diligent checks were made prior to the Provincial Treasury Office processing the payment of K1, 968, 612.61 made to Ela Motors Ltd for the purchase of 19 motor vehicles. Otherwise the payment would not have been processed, if diligent checks were not done properly.

#### 2. MR. GABRIEL SAUL'S RESPONSE

On 18 March 2017, Mr. Saul responded to the Commission's Provisional Report that was issued on 16 March 2017. Below is an extract of the letter in regard to Finding No.9:

- Point 9 (page 1)...the amount stated here is K1,968,612.61 made to Ela Motors for the purchase of 19 vehicles. However, according to your Finding of Facts under paragraph 5 in page 19 the total payment is K2,834,507.80. (I may be wrong?)

#### Comments

The Commission noted Mr. Lange's response to Finding No.9. However, the Commission's original comments on Finding No. 9 contained in its Provisional Report remain unchanged.

In regard to Mr. Saul's response, the Commission has noted and accepted his response to Finding No.9 of the Provisional Report. However, the Commission maintains that the amount K2,834,507.80 was the same amount contained in Cheque No. 115230 that was paid to Ela Motors to purchase 19 vehicles for the 19 LLG Presidents as highlighted in the Commission's Finding No.9 in the Provisional Report.

#### 4. RECOMMENDATIONS

##### [4.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1, the general purpose of this investigation is to determine whether any of the conduct under investigation was wrong, or whether any laws or administrative practices were defective.

The Commission is expressly authorized to form such opinions by Section 22(2) of the Organic Law on the Ombudsman Commission.

If, after making its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorized to make recommendations. Such recommendations are made under Section 22(2) of the Organic Law on the Ombudsman Commission.

Section 22 (2) OLOC states:

If in any case to which this section applies the Commission is of the opinion that any service, body, person or other appropriate authority should –

- (a) consider the matter further; or
- (b) take certain specific action; or
- (c) modify or cancel any administrative act; or
- (d) alter any regulation or ruling; or
- (e) explain more fully any administrative act; or
- (f) do any other thing,

the Commission shall report its opinion and the reasons for its

opinion, to the Minister responsible for the relevant service, body or person and to the Permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

In this chapter, recommendations are made based on the findings of wrong conduct and defective administration referred to earlier in the report.

Each recommendation is set out as follows:

- o The recipients (i.e. the persons to whom the recommendations are directed) are identified.
- o The main reason for making the recommendation, are stated.

#### [4.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

We recommend that some individuals have their continuing public employment carefully reviewed. The Commission is of the opinion that holders of public offices must continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

#### [4.3] RECIPIENTS OF RECOMMENDATIONS

When we make recommendations we are obliged by Section 22(2) of the Organic Law on the Ombudsman Commission to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the Organic Law on the Ombudsman Commission to report our recommendations to both the Minister and, if appropriate, the permanent or statutory

head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this Chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

#### [4.4] RESPONSIBLE MINISTERS

Section 148 of the Constitution provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Ministers set out in the table below.

#### [4.5] MINISTERS RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS

- Minister for Finance and Treasury
- Minister for Provincial Affairs & Inter-Governmental Relations

In the event of the title or responsibilities of the Minister changes after the date of this report, the responsibility for notifying the Commission of the steps being taken to give effect to its recommendations will pass to the Minister who, from time to time, has political responsibility for the services, bodies or persons who received our recommendations.

#### [4.6] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinions on things to be done are expressed in the form of  
–recommendations does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the Organic Law on the Ombudsman Commission to notify the Ombudsman Commission in writing within 30 days after the day of the service of the report, of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

If the Commission so requests, the responsible Minister, Permanent Head or statutory head as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.

Accordingly, there is a duty placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the Constitution and the Organic Law on the Ombudsman Commission.

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the Constitution.

#### [4.7] RECOMMENDATIONS

The Ombudsman Commission has upon receipt of responses from those recipients who were issued their copies of the Provisional Report in accordance with Section 17(4)(b) of the Organic Law on the Ombudsman Commission, developed 11 recommendations. These eleven (11) recommendations are hereby outlined in the following pages.

##### [4.7.1] RECOMMENDATION No. 1

The Ombudsman Commission recommends that the Governor for Madang

Province and the Provincial Administrator ensures that the Madang Provincial Government complies with the budgetary processes outlined in the Constitution, the Organic Law on the Provincial Governments and Local Level Governments and the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) when developing the annual Appropriation Act for the province.

#### Recipients

- Minister for Inter – Government Relations
- Minister for Finance
- Minister for National Planning
- Governor, Madang Province
- Secretary, Department of Provincial & Local Level Government Affairs

#### Recommendations

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- Secretary, Department of Implementation and Rural Development
- Clerk of the Madang Provincial Assembly
- Provincial Administrator, Madang

#### Reasons

1. It was found that the process that should have been followed leading up to the compilation of the Provincial Budget was not complied with pursuant to Section 187C (4) of the Constitution and Section 106 of the Organic Law on Provincial Governments and Local Level Governments states: Hence, the Appropriation Act 2014 and the Provincial Budget were done outside of the normal budgetary process which included the formulation and compilation of plans to tie the budget down.
2. It was found that the Madang Provincial Government and the Provincial Administration failed to comply with Financial Instruction No. 01/2013 when they passed the Appropriation Act 2014.
3. The Chairman of the Provincial Assembly and the PEC does not have the authority to transfer funds from one item to another. This responsibility of appropriation lies with the PEC, Secretary for Department of National Planning and Monitoring, Department

of Treasury and Department of Implementation and Rural Development.

#### [4.7.2] RECOMMENDATION No. 2

The Ombudsman Commission recommends that the Office of the Governor for Madang Province must strictly comply with the Appropriation Act passed by the Provincial Assembly in that respective year and utilize the Provincial Service Improvement Program grants as outlined in the Appropriation Act.

#### Recipients

- Minister for National Planning
- Minister for Inter-Government Relations
- Governor, Madang Province
- Secretary, Department of Provincial & Local Level Government Affairs
- Clerk of the Madang Provincial Assembly
- Provincial Administrator, Madang
- Provincial Treasurer, Madang

#### Reasons

1. During the JPP&BPC Meeting No.01/2014 which was attended by all elected and appointed members of the Provincial Assembly, Hon. Jim Kas, then MP, Governor, made a political commitment. It was also in this meeting that he stated that K100,000.00 would be taken out from each of the DSIP funds and the PSIP funds to fund the purchase of the 19 motor vehicles.

#### Recommendations

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2. It was found that this was improper as Hon. Jim Kas, then MP, Governor did not have the power or authority to divert or transfer funds from one appropriation to another. This power and authority lies with the Provincial Government.
3. It was also found that in 2013 and 2014, the Provincial Government did not allocate any miscellaneous funds in its respective budgets to cater for



any political

commitments by Hon. Jim Kas, then MP, Governor made. However, due to this policy

decision, the Provincial Administration was pressured to divert funds to cater for the

Hon. Jim Kas, Governor's political commitment.

4. The action of the Provincial Administration was in line with the Madang JPP&BPC

Resolution No.01/02/2014, made in Meeting No.01/2014 in the Office of the Governor

for Madang Province. In this case, funding for this unbudgeted activity came from the

DSIP funds and the LLG SIP funds contrary to the original intention of the funds.

5. In addition to this, Hon. Jim Kas, then MP, Governor, misled the Presidents of the 19

LLGs that funding for the purchase of the vehicles would come from his component

of the PSIP funds, when in actual fact the funding came from the DSIP funds and the

LLGSIP funds.

#### [4.7.3] RECOMMENDATION No. 3

The Ombudsman Commission recommends that the Provincial Government and the

Provincial Administration must strictly comply with the Public Finance (Management)

(Amendment) Act 1995 (No.5 of 2016), the National Executive Council Decision

No.102/2012, Financial Instruction No.01/2013 and the Department of Implementation

and Rural Development PSIP, DSIP, and LLGSIP Administrative Guidelines, when

utilizing the Provincial Service Improvement Program grants as outlined in each

Appropriation Act for that particular year.

#### Recipients

- Minister for Finance
- Governor, Madang Province
- Secretary, Department of Finance
- Secretary, Department of Implementation and Rural Development
- Clerk of the Madang Provincial Assembly
- Provincial Administrator, Madang
- Provincial Treasurer, Madang

#### Reasons

1. On 30 October 2012, the NEC made a Decision No.102/2012 that issued directions for Service Improvement Program (SIP) and funding to be done on Key Sectorial Basis.

That is, the SIP and its funds were to be based on Infrastructure; Health; Education; Law & Order; Economic & Agriculture and Administration

2. On 1 January 2013, Mr. Steven Gibson, then Secretary, Department of Finance, approved and issued Financial Instruction No.01/2013 for the implementation of the PSIP, at the Provincial level, DSIP at the District level and LLGSIP at the LLG level

Recommendations

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3. During the JPP&BPC Meeting No. 01/2014 which was attended by all elected and appointed members of the Provincial Assembly, Hon. Jim Kas, then MP, Governor, made a political commitment. It was also in this meeting that he stated that

K100,000.00 would be taken out from each of the District Services Improvement

Program funds and the Provincial Services Improvement Program funds to fund the purchase of the 19 motor vehicles.

4. It was found that this was improper as Hon. Jim Kas, then MP, Governor did not have the power or authority to divert or transfer funds from one appropriation to another.

This power and authority lies with the Provincial Government.

5. It was also found that in 2013 and 2014, the Provincial Government did not allocate any miscellaneous funds in its respective budgets to cater for any political commitments by Hon. Jim Kas, then MP, Governor made. However, due to this policy decision, the

Provincial Administration was pressured to divert funds to cater for the Hon. Jim Kas, then MP, Governor's political commitment.

6. The action of the Provincial Administration was in line with the Madang JPP&BPC

Resolution No.01/02/2014, made in Meeting No.01/2014 in the Office of the Governor for Madang Province. In this case, funding for this unbudgeted activity came from the

DSIP funds and the LLGSIP funds contrary to the original intention of the funds.

7. In addition to this, Hon. Jim Kas, then MP, Governor, misled the Presidents of the 19 LLG that funding for the purchase of the vehicles would come from his component of the PSIP funds, when in actual fact the funding came from the DSIP funds and the LLGSIP funds.

#### [4.7.4] RECOMMENDATION No. 4

The Ombudsman Commission recommends that all Joint Provincial Planning and Budget Priority Committee and District Development Authorities must strictly comply with Section 25(2) of the Organic Law on the Provincial Government and Local Level Government.

#### Recipients

- Minister for Inter – Government Relations
- Minister for National Planning
- Governor, Madang Province and Chairman of the Madang JPP&BPC
- Secretary, Department of Provincial & Local Level Government Affairs
- Provincial Administrator, Madang

#### Reasons

1. On 2 March 2014, the Madang JPP&BPC in its Meeting No.01/2014, Hon. Jim Kas, then MP, Governor, informed those present in that meeting that all 19 LLG Presidents would be given vehicles.
2. The JPP&BPC meeting was attended by the LLG Presidents, two Open Members of Parliament and then Provincial Administrator.

#### Recommendations

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3. The Chairmen for each of the District Development Authority, or their nominees were not present in the meeting as is required in Section 25(2) of the Organic Law on the Provincial Government and Local Level Government.

#### [4.7.5] RECOMMENDATION No. 5

The Ombudsman Commission recommends that the Madang Joint Provincial Planning and Budget Priority Committee must strictly comply with Section 25(3) of the Organic Law on the Provincial Governments and Local Level Governments

#### Recipients

- Minister for Inter – Government Relations
- Minister for National Planning
- Governor, Madang Province and Chairman of the Madang JPP&BPC
- Secretary, Department of Provincial & Local Level Government Affairs
- Provincial Administrator, Madang

#### Reasons

1. The Madang JPP&BPC does not have the powers or the authority to perform the functions and roles of the Provincial Supply and Tenders Board.
5. The Madang JPP&BPC's functions were not adhered to in this instance when those present unanimously accepted the Hon. Jim Kas, then MP, Governor's statement that all 19 LLG Presidents were going to receive their motor vehicles.
6. Due to the political commitment made by the Hon. Jim Kas, then MP, Governor, to purchase the motor vehicles he had to source the funds from the Provincial Services Improvement Program.

#### [4.7.6] RECOMMENDATION No. 6

The Ombudsman Commission recommends that the Office of the Governor for Madang Province must strictly comply with the Salary Remuneration Committee Determination Schedule G007-18 when making appointment of Personal Staff.

#### Recipients

- Minister for Inter-Government Relations
- Secretary, Department of Provincial & Local Level Government Affairs
- Minister for Finance
- Governor, Madang Province
- Secretary, Department of Finance

#### Reasons

1. The Office of the Prime Minister determines the appointments of Ministerial Staff.

However, it was found that the Official Personal Staff Act is silent on the appointment of the Offices of the Provincial Governors.

2. This the silence in the Official Personal Staff Act was compensated by the Salary

Remuneration Committee Determination Schedule G007-18, which stated that the Provincial Governors are entitled to one personal staff.

3. Therefore, the appointment of the First Secretary or any one personal staff for the

Office of the Provincial Governor must comply with the procedures outlined in the

Official Personal Staff Act and the Salary Remuneration Committee Determination Schedule G007-18.

#### [4.7.7] RECOMMENDATION No. 7

The Ombudsman Commission recommends that the Office of the Governor for Madang

Province ensures that only Officers with financial delegations must endorse or approve any Finance Forms.

#### Recipients

- Governor, Madang Province
- Provincial Administrator, Madang
- Provincial Treasurer, Madang

#### Reasons

1. It was found that Mr. Augustine Dunstan, First Secretary to the Governor, endorsed or

approved requisitions and/or cheque for payments on behalf of the Office of the

Governor or for the Provincial Administration.

2. Mr. Lange, when delegating his financial powers to Financial Delegates and Section 24

Officers indicated that the financial delegate for Mr. Augustine

Dunstan was K2,000  
and below.

3. Mr. Dunstan had no authority to endorse and/or approve any  
Finance Forms with  
amounts above K2,000.

Recommendations

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#### [4.7.8] RECOMMENDATION No. 8

The Ombudsman Commission recommends that the Provincial  
Administrator ensures  
the Madang Provincial Administration must strictly comply with  
Section 40 of the  
Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016),  
Financial  
Instructions No.01/2013 and the Department of Implementation and  
Rural  
Development's PSIP, DSIP and LLGSIP Administrative Guidelines in the  
event that  
there is a non-functional Provincial Supply & Tenders Board.

#### Recipients

- Minister for Finance
- Minister for National Planning & Monitoring
- Governor, Madang Province and Chairman, Provincial Supply &  
Tenders Board
- Secretary, Department of Finance
- Secretary, Department of Implementation and Rural Development
- Provincial Administrator, Madang
- Provincial Treasurer, Madang

#### Reasons

1 It was found that at that material time when the Provincial  
Administration made the  
Cheque payment to Ela Motors Ltd, Madang Province did not have a  
functional  
Provincial Supply & Tenders Board.

4. The Madang Provincial Administration failed to consult and submit all relevant documents to the Department of Implementation and Rural Development for the Provincial Administration to purchase 19 vehicles for the 19 LLG Presidents.
5. In spite of the non-existence of a Provincial Supply & Tenders Board, Mr. Lange approved and signed the Cheque for the purchase of 19 vehicles for the 19 LLG Presidents and paid it to Ela Motors Ltd.

#### [4.7.9] RECOMMENDATION No. 9

The Ombudsman Commission recommends that the Provincial Administrator ensures that Madang Provincial Administration must strictly comply with Sections 39B and 40 of the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016), Financial Instructions No.01/2013 and the Department of Implementation and Rural Development's PSIP, DSIP and LLGSIP Administrative Guidelines when deciding to award a contract.

#### Recipients

- Minister for Finance
- Minister for National Planning
- Governor, Madang Province and Chairman, Provincial Supply & Tenders Board

Recommendations

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- Secretary, Department of Implementation and Rural Development
- Secretary, Department of Finance
- Provincial Administrator, Madang
- Provincial Treasurer, Madang

#### Reasons

1. The contract for the purchase of 19 vehicles for the 19 LLG Presidents was not a budgeted item.
2. It was found that the Madang Province did not have a functional Provincial Supply & Tenders Board.

3. Regardless of this and with the knowledge of the existence of Financial Instructions No.01/2013 and the Department of Implementation and Rural Development's PSIP, DSIP and LLSIP Administrative Guidelines, the Provincial Administration at that material time did not perused the fact that in the event that there is a non-functional Provincial Supply & Tenders Board, it should have consulted the Department of Implementation and Rural Development and forwarded the contracts to the Department of Implementation and Rural Development and requested them to conduct the tendering and procurement of the contracts.

#### [4.7.10] RECOMMENDATION No. 10

The Ombudsman Commission recommends that the Provincial Administrator ensures that Madang Provincial Administration must strictly comply with Section 47B of the Public Finance (Management) (Amendment) Act 1995 (No.5 of 2016) and Financial Instructions No.01/2013 when deciding to release funds to fund an activity.

#### Recipients

- Minister for National Planning
- Minister for Finance
- Governor, Madang Province and Chairman, Provincial Supply & Tenders Board
- Secretary, Department of Implementation and Rural Development
- Secretary, Department of Finance
- Provincial Administrator, Madang
- Provincial Treasurer, Madang

#### Reasons

1. There was no Provincial Authority to Pre-Commit Committee meeting or decision at that material approving for K3 million to be released to fund the activity.
2. However, Hon. Jim Kas, then MP, Governor, Madang Province made the decision to divert funds from the 19 Districts SIP to fund the purchase of the 19 vehicles for the 19 LLG Presidents.



3. The total amount of K2,834,507.80 that was raised in the Cheque numbered 115230 for Ela Motors Ltd by the Provincial Administration and Provincial Treasury required the Provincial Authority to Pre-Commit Committee approval.

[4.7.11] RECOMMENDATION No. 11

The Ombudsman Commission recommends that the Provincial Administrator as the Chief Accountable Officer and Section 32 Officer must do due diligence checks on all Finance Forms prior to approving them.

Recipients

- Minister for Finance
- Governor, Madang Province
- Provincial Administrator, Madang
- Provincial Treasurer, Madang
- Secretary, Department of Finance

Reasons

1. Mr. Lange failed to properly cross check the Financial Directive No. 2/2014 that he issued on 17 February 2014, together with the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and Financial Instructions No.01/2013 to ensure whether or not Mr. Augustine Dunstan or other Officers had the proper authority to approve and sign off on the Requisition for Expenditure Forms.
2. Mr. Lange failed to sign the General Expenses Form dated 13 March 2014 as the Financial Delegate and Section 32 Officer.
3. The Financial Delegate who signed on the General Expenses Form dated 13 March 2014 was Mr. Augustine Dunstan, the First Secretary to the Governor who was not the appropriate officer.
4. Mr. Dunstan's actions went beyond his authority and limit when he signed off on the General Expenses Forms for the purchase of motor vehicles.

## 5. CONCLUSION

Good and desirable governance of the public institutions as well as the nation is dependent upon good and sound management and decisions being made by those placed in responsible positions. Good public officials and managers understand their roles and responsibilities and perform their duties within the ambit of the laws that governs their conduct. Public officials who are empowered by law make decisions that will affect the lives of individuals must ensure that they carry out their duties in good faith and in compliance with the laws.

Public officials must exercise due diligence, honesty and dedication in the work they are entrusted with. Inconsistency in decision making or non-compliance with relevant laws creates doubt in the minds of the public that the decision maker has been influenced by outside sources and forces not conducive to good governance and accountability. Professional negligence must be dealt with seriously.

Some characteristics of good governance necessary to eliminate bad administrative practices include honesty, diligence, consistency, competency, compliance with established laws and procedures, and standing up to political interference.

This Report highlighted irregularities committed by then Provincial Government and then Provincial Administration when they decided to purchase 19 vehicles

from Ela Motors Ltd for the 19 LLG Presidents. It further highlights the non-compliance by then JPP&BPC in holding its meetings in accordance with Section 25(2) of the Organic Law on the Provincial Governments and Local Level Governments. It further highlighted the political influence that was exerted by the politicians on the Provincial Administration. It further highlighted that the Provincial Administration and the Provincial Treasury failed to comply with the tender and procurement procedures as outlined in the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) and Financial Instruction No:01/2013.

Then Provincial Government, the Office of the Governor, the Provincial Administration and Provincial Treasury failed to live up to the expectation of the people and State in complying with the administrative processes and procedures and the Acts governing the operation of the Provincial Administration and Provincial Treasury.

The officers of the Provincial Administration and the Provincial Treasury are to take note of the findings and recommendations made in this Report and make special effort to correct the irregularities for the good of the Province and the people of Papua New Guinea.

The leaders to whom the Ombudsman Commission directs its recommendation are asked to carefully consider the recommendations and implement them.

MICHAEL DICK  
CHIEF OMBUDSMAN

RICHARD PAGEN  
OMBUDSMAN

PORT MORESBY  
May 2018

Conclusion

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## 6. RELEVANT LAWS

### [6.1] CONSTITUTION

Section 219 of the Constitution lists the functions of the Ombudsman Commission. The first

of these functions is:

(d) to investigate, on its own initiative or on complaint made by a person affected, any conduct on the part of-

... (any governmental body or an officer or employee of any such body)

specified by or under an Organic Law in the exercise of a power or function vested in it or him by law in cases when the conduct is or may be wrong, taking into account amongst other things, the National Goals and Directive Principles...

Section 148 of the Constitution is concerned with the functions and responsibilities of Ministers.

(1) Ministers (including the Prime Minister) have such titles, portfolios and responsibilities as are determined from time to time by the Prime Minister.

(2) Except as provided by a Constitutional Law or an Act of the Parliament, all departments, sections, branches and functions of the Prime Minister is politically responsible for any of them that are not specifically allocated under this section.

(3) Subsection (2) does not confer on a Minister any power of direction or control.

Section 187C (1) and (4) of the Constitution is concerned with the Constitution, functions of the Provincial Governments and Local Level Governments.

(1) Subject to this Part, an Organic Law shall make provision in respect of the constitution, powers and functions of a Provincial Government or a Local-level Government.

(4) An Organic Law shall make provision for and in respect of-

(a) grants by the National Government to Provincial Governments and Local-level Governments; and

(b) subject to Subsection (4A), the imposition, collection and distribution

of taxation by Provincial Governments and Local-level Governments,

and may make other financial provisions for Provincial Governments and Local-level

Governments, to an extent reasonably adequate for the performance of their functions.

Relevant Laws

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Section 106 of the Organic Law on Provincial Governments and Local Level Governments which state:  
which state:

[6.2] ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL LEVEL GOVERNMENTS

Section 25 is concerned with the roles and functions of the Provincial Executive Council Committees.  
Committees.

(1) A Provincial Executive Council shall, in accordance with an Act of the Parliament—

(a) establish a Joint Provincial Planning and Budget Priorities Committee; and

(b) establish such number of committees (including permanent committees) as it considers necessary to carry out its functions; and

(c) determine all matters relating to such committees.

(2) The Joint Provincial Planning and Budget Priorities Committee shall consist of—

(a) a member of the Provincial Executive Council appointed by the Governor, who shall be the Chairman; and

(b) the Chairman (or his nominee) of each District Development Authority; and

(c) any other members not exceeding three in number appointed, on an ad hoc basis, by the Provincial Executive Council.

(3) The Joint Provincial Planning and Budget Priorities Committee shall have the following functions:—

(a) to oversee, co-ordinate and make recommendations as to the overall planning in the province, including budget priorities, for consideration by the National Government; and

(b) to determine and control budget allocation priorities for the Province; and

(c) to approve Provincial Government Budgets for presentation to the Provincial Assembly; and

(d) to draw up a rolling five-year development plan and annual estimates for the province; and

(e) to conduct annual reviews of the rolling five-year development plan.

(4) The Provincial Administrator shall be the Chief Executive Officer of the Committee.

·  
(5) A Member of the Parliament who occupies an office referred to in Section 19(1)(b) is not eligible to be a member of a Committee under this section.  
is not eligible to be a member of a Committee under this section.

(6) The Governor shall appoint a Chairman for each Committee under this section, but such appointments shall be made so as to ensure fair representation of the various electorates and districts within the province.

(7) An Act of the Parliament shall make provision for other functions and powers of, and administrative arrangements for, the Committee.

Section 106 of the Organic Law on the Provincial Governments and Local Level Governments is concerned with Provincial Planning and Data System.

(1) There shall be established in each province an extended service of the Department responsible for planning matters and of the National Statistical Office.

(2) The functions of these services are to establish and maintain an effective and efficient provincial and local-level planning and data system.

### [6.3] PROVINCIAL GOVERNMENTS ADMINISTRATION ACT 1997

Section 17 deals with Powers and functions delegated to the Provincial Governments.

Section 17 Powers and functions delegated.

Any legislative power or function of the National Government or power or function of the National Government under an Act of the Parliament delegated to a Provincial Government under Section 50 of the Organic Law shall be exercised and performed as prescribed.

Section 18 empowers the Provincial Governments to make laws and regulations in accordance with the Organic Law on Provincial Governments and Local Level Governments.

18. Making of provincial laws.

(1) An Act of a Provincial Assembly is effective where—

(a) it has been made by the Assembly; and

(b) it has been certified

(i) by the Clerk to the effect that it is a true copy of the Act made by the Assembly; and

(ii) by the Chairman that it was made by the Assembly; and

(c) it has been sealed with the Seal of the Assembly in accordance with the Standing Orders of the Assembly; and

(d) it has been brought into operation in accordance with its commencement clause.

(2) An Act of a Provincial Assembly may have retrospective or retroactive effect.

[6.4] PUBLIC FINANCE (MANAGEMENT) (AMENDMENT) ACT 1995 (No.4 of 2013)

5. Responsibilities of Heads of Departments.

(1) Each Departmental Head is responsible for ensuring that, in relation to the Department of which he is Head—

- (a) the provisions of this Act are complied with; and
- (b) all accounts and records relating to the functions and operations of the Department are properly maintained; and
- (c) all necessary precautions are taken to safeguard the collection and custody of public moneys; and
- (d) all expenditure is properly authorized and applied to the purposes for which it is appropriated; and
- (e) there is no over-commitment of funds and a review is undertaken each month to ensure that there is no over-expenditure or over-commitment and the collection of public moneys is according to approved plans and estimates; and
- (f) all expenditure is incurred with due regard to economy, efficiency and effectiveness and the avoidance of waste; and
- (g) all necessary precautions are taken to safeguard stores and other property of the State; and
- (h) any fee, charge or tax imposed by legislation for which the Department is responsible is collected promptly and to the fullest extent; and
- (i) any fee, charge or tax imposed by legislation for which the Department is responsible is reviewed at least once in each year in order to establish—
  - (i) whether the level of such fee, charge or tax is adequate; and



(ii) whether such fee, charge or tax should be increased and, if so, by what amount,

and that financial reports on reviews and other such matters are submitted to the Departmental Head of the Department responsible for financial management in the format specified in the Financial Instructions; and

(j) information required by the Public Accounts Committee is submitted to that Committee accurately and promptly; and

(k) advice on financial management is given to the Minister politically responsible for the Department; and

(l) proper estimates in respect of collection and expenditure of public moneys are prepared in a form specified in the Financial Instructions; and

Relevant Laws

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(m) as soon as practicable after the end of each quarter of each fiscal year he submits to the Departmental Head of the Department responsible for financial management a report on financial management in a form specified in the Financial Instructions.

(2) The responsibility of a Departmental Head under Subsection (1) is not derogated or reduced by reason of any delegation of functions by him to another person.

(3) A Departmental Head is liable to imposition of surcharge under Section 102 and levy of penalty for an offence under Section 112 in addition to disciplinary action under the Public Service General Orders for improper discharge of responsibility under Subsection (1).

Section 6 deals with the Accountable officers and financial delegates.

6. Accountable officers.

(1) A person who—

(a) is an officer; or

(b) authorizes the collection or payment of public moneys or accounts for stores, whether or not he is an officer,

is an accountable officer for the purposes of this Act.

(2) An accountable officer shall comply with the provisions of this Act in respect of all matters for which he is responsible and for all public moneys and stores in his possession or under his control, and shall duly account for them.

Section 40 deals with the tender and procurement procedures for property, stores, works and services.

(1) Subject to—

(a) this section; and

(b) Section 41,

tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

(2) In relation to the purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

(3) The preceding provisions of this section do not apply to the purchase or disposal of property or stores or the supply of works and services—

(a) that are to be purchased from, disposed of to, or executed or performed by—

Relevant Laws

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(i) a public body or an authority or instrumentality of the State approved for the purpose by the Minister; or

- (ii) a Provincial Government; or
- (iii) a Local-level Government; or
- (iv) an approved overseas agency; or

(b) in respect of which a Board certifies that the inviting of tenders is impracticable or inexpedient; or

(c) where, in individual transactions involving amounts not exceeding K500,000.00, the Minister in his discretion considers that there is a natural disaster or it is not expedient or proper to call public tenders and, prior to the goods or services being provided, by certificate in writing narrates these circumstances and waives the provisions of this section;

(d) where the terms of an agreement concluded, or proposed to be concluded, with any international organization under which the State is to receive moneys, make specific provision for the manner in which tenders will be invited for contracts to be performed in relation to the agreement.

(4) In Subsection (3)(a)(iv), "approved overseas agency" means the government, a government department, a government instrumentality or a statutory corporation of a country other than Papua New Guinea approved by the Minister by notice in the National Gazette.

(5) In relation to contracts for the supply of works and services, the provisions of this section and of Section 41 shall apply to—

- (a) turnkey contracts; and
- (b) build-operate transfer contracts; and
- (c) contracts which in substance are similar to turnkey contracts or build-operate transfer contracts; and
- (d) contracts involving the expenditure of public moneys.

Section 47B of the Public Finance (Management)(Amendment) Act 1995 (No.4 of 2013) deals with the approval of funds for projects

47B. Authority to Pre-commit Expenditure.

(1) The Departmental Head of the Department responsible for financial management may issue to a Departmental Head an Authority to Pre-commit Expenditure in relation to the purchase of property or stores or to the supply of goods or services where the Departmental Head of the Department responsible for financial management is satisfied that—

(a) in the case of proposed expenditure exceeding K100,000.00—

Relevant Laws

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(i) the provisions of this Part have been complied with in relation to the purchase or supply; and

(ii) funds will be available to meet the proposed schedule of payments for the purchase or supply; and

(b) in the case of proposed expenditure not exceeding K500,000.00, the circumstances of the proposed expenditure are such that it is appropriate to authorize the Department, to the Departmental Head of which the Authority to Pre-commit Expenditure was granted, to enter into a contract for the purchase of property or stores or for the supply of goods or services notwithstanding that the full amount of funds to meet the payment required under the contract is not immediately available but it is within the appropriation for the year to which the Authority to Pre-commit Expenditure relates for the item to which it relates.

(2) An Authority to Pre-commit Expenditure under Subsection (1) shall specify—

(a) the purchase of property or stores or the supply of goods or services to which it relates; and

(b) the maximum amount to which the Authority extends.

(3) Subject to Subsection (4), an Authority to Pre-commit expenditure under Subsection (1) authorizes the execution, in accordance with and subject to compliance with the procedures specified in this Part, of a contract for the purchase of property or stores or for the supply of goods and services specified in the Authority to the extent of an amount not exceeding the maximum amount specified in the Authority.

(4) A contract under Section 47 shall not be entered into unless—

(a) an Authority to Pre-commit Expenditure under Subsection (1) relating to the contract has been issued; and

(b) all other requirements of this Part relating to the contract have been complied with.

Section 110 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) is concerned with the delegation of the powers and function of the Head of Department.

Section 110 of the Public Finance (Management) (Amendment) Act 1995 (No.4 of 2013) deals with delegation

A Departmental Head may, by instrument, delegate to a person all or any of his powers and functions under this Act (other than this power of delegation).

[6.5] FINANCE MANAGEMENT MANUAL

PART 11 – PROCUREMENT – FRAMEWORK AND PRINCIPLES

DIVISION 1 – FUNDAMENTAL PRINCIPLES

1. The five fundamental principles in the GoPNG procurement system are:

- a. –Value for moneyll,

- b. Transparency,
- c. Effective competition,
- d. Fair and ethical dealing, and
- e. Efficiency and Effectiveness.

These principles are explained below.

## 2. –Value for Money

–Value for money involves obtaining goods and services that best meet the government's need at the lowest total cost.

The main objective of GoPNG procurement is to obtain –value for money in the

acquisition of goods and services using ethical, transparent processes whilst promoting open and effective competition.

All decision makers in the procurement process must satisfy themselves that a proposed

contract will make effective use of taxpayers or donor agency funds.

## 3. Transparency:

Transparency involves the clear and public documentation of procurement processes

and decisions. All processes used and decisions made should be able to withstand independent review and scrutiny.

It is the responsibility of all GoPNG staff involved in procurements to act in a transparent manner.

## 4. Effective Competition:

Effective competition is a key operating principle that must be applied if –value for money is to be achieved.

Competition that is effective will see a number of independent companies bidding to provide goods and services to the GoPNG, through the procurement process. Creating

effective competition involves publicly requesting tenders and quotes from suppliers,

providing timely and adequate information to suppliers, and ensuring that new entrants

and small suppliers are able to participate.

## 5. Fair and Ethical Dealing:

The GoPNG in spending taxpayers and donor agency money has a special responsibility

Relevant Laws

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to avoid waste, act honestly and impartially, and be accountable for procurement actions.

The central principles underpinning fair and ethical dealing include:

- a. Treating potential and existing suppliers with equality and fairness
- b. Not seeking personal or family gain
- c. Treating suppliers and potential suppliers information with respect and confidentiality;

d. Where conflict of interest occurs, it must be declared  
 It is important not only that all staff involved in major procurements follow these principles; but also that they be seen at all times to follow these principles. Failure to do so undermines the credibility of the whole GoPNG procurement process.

6. Efficient and Effective Operation:

The principle of efficient and effective procurement requires procurement staff to use procurement processes that are commensurate with the amount of monies being spent.

For example, it would not be efficient or effective to run a public tender for expenditure of K5,000. The overhead cost of running a public tender is substantial, and such a small purchase would not be able to justify the expense of the procurement process.

Appropriate processes for different levels of expenditure are laid down in Part 11, Division 2 of these instructions.

DIVISION 2 – PROCUREMENT DEFINITION and PROCESSES

7. Procurement is defined as a process undertaken by the Government in order to obtain goods, works or services. As such, procurement includes all minor purchases, major purchases, hire purchases, rentals and leases.

8. The procurement processes to be used are determined by the value (in kina), of the procurement. The categories of expenditure by value are:  
 a. Minor Procurements – less than K100,000, and  
 b. Major Procurements – greater than or equal to K100,000. This is summarised in the table below.

Procurement Value	Classification	Process	Detailed Reference
< K100,000	Minor	Quotes	Part 12
>= K100,000	Major	Public Tender	Part 13

9. When considering whether a procurement is –major or –minor, the total amount of monies to be paid to a supplier over the life of the contract

must be established.

10. Major procurements generally occur through a public tender process – Part 13  
Relevant Laws

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provides specific details of processes available for major procurements.

11. Minor procurements occur by obtaining quotes – Part 12 provides specific detail of these procurement processes.

12. The fundamental principles of procurement are to be adhered to, irrespective of whether the procurement is major or minor.

13. Procurement processes result in the formation of a contract between the GoPNG and a Contractor. A contract is an exchange of a conditional agreement between GoPNG and a Contractor, which once executed is a legally enforceable agreement in law.

14. For clarity, contractors, suppliers and consultants are simply referred to in Parts 11, 12, 13, 14, 15 as ‘Contractors’.

15. No express or implied contract can be entered into or purchase order raised without following the prescribed financial procedures for purchase of goods and services, or capital works or for disposal of Government assets; as outlined in Parts 11, 12, 13, 14 and 15 of this Manual.

16. For the following expenditures, the additional special procedures (Part 13 of this Manual) will apply:

- a. Official overseas travel
- b. Air Charters (including helicopter charters)
- c. Engaging of consultants
- d. Official Entertainment Expenses

Approval by a special committee does not dispense with the need to use the appropriate procurement (major or minor) process, based upon the amount of the expenditure.

#### DIVISION 3 – LINKAGE BETWEEN FINANCIAL MANAGEMENT PROCESSES AND PROCUREMENT PROCESSES

17. Procurement activities are governed by the Public Finance (Management) Act 1995,



Regulations, and Financial Instructions. Procurement processes necessarily interlace with financial management processes such as budgeting, commitment of funds, and management of expenditure.

18. The specific linkages between the Financial Management System, and Procurement processes are detailed for Major Procurements in Part 13, and for Minor Procurements in Part 12.

#### DIVISION 4 – OTHER REQUIREMENTS

19. Splitting Contracts: No attempt must be made to circumvent or by-pass the limits on the powers given under the Public Finance (Management) Act 1995 or other limits laid down in this Manual by splitting contracts, requisitions or purchase orders.

20. Existing Contracts: Responsible Officers must satisfy themselves before purchasing, that no current contract exists for the particular item they require.

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#### 21. Forward Planning:

Purchases of goods and services (including Works) must be planned well in advance especially where purchases require a long lead-time. Since Parliamentary appropriations are annual, contracts should be planned in a timely manner, and orders for purchases raised in time so that payments are made as far as possible before the close of the year.

#### 22. Contracts Spanning Fiscal Years:

Departments must ensure that, where contracts span more than 1 fiscal year, appropriations are made for each fiscal year. This requirement is fully outlined in Part 13, Attachment 1.

#### 23. Mandated Government Suppliers:

For printing or mapping needs, the appropriate specialist Government agency such as Government Printing Office, or National Mapping Bureau must be used.

#### 24. Purchase from other Government Agencies:

All purchases where the goods, services or works are to be provided by one government agency to another, are exempt from tender procedures under Section 40 (3) and (4) of the Act.

25. Commitment Control:

a. The procedure for obtaining the Section 32 officer's approval and maintaining control over funds allocated through Cash Fund Certificates is outlined in Part 7 of this Manual.

b. All purchase orders must be pre-committed using the appropriate accounting system (PGAS) and raised under the authorised Financial Delegate's signature. The Departmental Head who appoints the Financial Delegate can sign the purchase orders or other Finance Forms in the place of Financial Delegates notwithstanding the issue of Cash Fund Certificates, after following the prescribed commitment procedure.

c. All major procurements must be pre-committed using the process outlined in Part 13, Attachment 1.

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 Finance (Management) Act 1995 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

Relevant Laws

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obtaining a –value for moneyll 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

Inexpediencyll, the public tendering process will not apply. A -Certificate of

Inexpediencyll 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 moneyll 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

Establish the Need for  
Goods, Works or Services

Develop Specification and  
Bid Documents and costs  
estimates

Obtain an Authority to

Pre-Commit

Issue Bid Documents to  
prospective Suppliers

Write Report Recommending a Supplier(s)	Consider Recommendation Report
The Board may require clarification of issues in relation to the tender.	
Implement and Administer Contract to Completion	Execute Contract (if within the Boards delegated limit,

Relevant Laws

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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 Finance (Management) Act 1995 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

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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 Nationalll or the –Post–Courierll)

- 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 Nationalll or the –Post–Courierll)

- 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 –publiclyll.

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

envelopell 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

Relevant Laws

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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 Committeell (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 Finance (Management) Act

1995, Regulations and Financial Instructions, using the processes outlined in the

–Good Procurement Manualll. 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–offerll 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 lifell 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 moneyll 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.

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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 Finance (Management) Act  
1995, and

2 Outline why the recommended tenderer represents –value for  
moneyll. 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 Reportll 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 Finance (Management Act) 1995, Regulations and Financial Instructions, and
- 2) The recommended offer represents –value for moneyll.

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 copies 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 Finance (Management Act) 1995 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 5 – CONFIDENTIALITY

17. Section 46 of the Public Finance (Management) Act 1995 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

Relevant Laws

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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 fulfill their role.

#### 22. Contract Parties and Relationships:

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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

Relevant Laws

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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  
Relevant Laws

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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 1995, 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 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.

Establish the Need for  
Goods, Works or Services

Establish Annual Budget  
and Work plan

Develop Specification  
and Bid Documents

Obtain an APC, based  
upon clear estimates  
Ref: FI, Part 10, Attachment 1

Attachment 1

Contractor Signs APC form given to Contractor  
Contract (Original Copy)  
Ref: FI, Part 10,

of  
and  
times.

Contractor Completes  
Requirement In large contracts the process  
requesting work, doing work,  
invoicing can occur many

Contract Manager Supplier  
Receives Invoice and Invoice  
Confirms completion

Prepare General Expenses Form  
(FF4) and attach supporting  
documentation

Confirm that the Contractor Paid

Claims Examination and  
Payment Authorisation Process

Contractor has  
received full payment

Relevant Laws

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#### 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

Relevant Laws

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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.

Relevant Laws

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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.

Relevant Laws

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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.

Relevant Laws

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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 Relevant Laws

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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 pre-commitment 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:-

Relevant Laws

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

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.

Relevant Laws  
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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.

#### [6.6] OFFICIAL PERSONAL STAFF ACT

9. Persons entitled to official personal staff.

The following persons are entitled to official staff in accordance with the provisions of

this Act:-  
(g) the Prime Minister; and  
(h) a Minister; and  
(i) the Leader of the Opposition; and  
(j) the Leader of a minority Party (being a party with at least  
12 members of  
Parliament) recognized as such by the Speaker; and  
(k) the Speaker.

(l) A Parliament Secretary appointed under the Parliamentary Secretaries Act 2004.

Relevant Laws

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[6.7] SALARY REMUNERATION COMMITTEE DETERMINATION

SCHEDULE G007-18

OFFICIAL PERSONAL STAFF

Recipients A

1. Prime Minister
10. Deputy Prime Minister
11. Speaker
12. Deputy Speaker
13. Leader of the Opposition
14. Deputy Leader of the Opposition
15. Ministers
16. Vice-Ministers
17. Former Prime Ministers

Benefits

Such staffing, levels as are approved by the Prime Minister from time to time in accordance with the Official Staffing Act.

Recipient B: Provincial Governors

Benefits: Personal staff allowance of K100,000 per annum

