

AUTONOMOUS REGION OF BOUGAINVILLE.

AN ACT

No: 3/2014

Entitled

Bougainville Government Contracts and Tenders Act 2014

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AUTONOMOUS REGION OF BOUGAINVILLE.

AN ACT

NO:

Entitled

Autonomous Bougainville Government Contracts and Tenders Act 2014

Being an Act to provide for Autonomous Bougainville Government contracts and tenders.

MADE by the House of Representatives and this Act comes into operation on a day fixed by the President on the advice of the Bougainville Executive Council.

PART 1 – PRELIMINARY.

1. PURPOSE.

The purpose of this Act is to establish the rules and procedures that must be followed with Autonomous Bougainville Government contracts and tenders.

2. INTERPRETATION.

In this Act, unless the contrary intention appears:

“**Board**” means the Bougainville Tenders Board or a Special Supply and Tenders Board established under Section 9;

“**Bougainville Tenders Board**” means the Supply and Tenders Board established by Section 8;

“**Chief Secretary**” has the same meaning as in the *Bougainville Public Services (Management and Administration) Act 2014*;

“**Finance Departmental Head**” means the Head of the Department responsible for financial management;

“**Financial Instructions**” has the same meaning as in the *Bougainville Public Finance (Management and Administration) Act 2014*;

“**Minister**” means the Minister responsible for financial management;

“*officer*” has the same meaning as in the *Bougainville Public Services (Management and Administration) Act 2014*, and includes the chief executive officer (however described), and a member of the board or controlling body, of a statutory body or a public body, other than a public body or a statutory body prescribed by the regulations;

“*property*” means real property or personal property;

“*public body*” has the same meaning as in the *Bougainville Public Finance (Management and Administration) Act 2014*;

“*Rules*” means the rules issued by the Minister under Section 8 or 9;

“*State*” means the Independent State of Papua New Guinea;

“*statutory body*” has the same meaning as in the *Bougainville Public Finance (Management and Administration) Act 2014*.

3. APPLICATION.

(1) This Act applies to contracts entered into, or purported to have been entered into, by or on behalf of:

- (a) the Autonomous Bougainville Government, on or after the date of coming into operation of this Act; and
- (b) a public body or a statutory body, on or after the date of coming into operation of this Act, other than a public body or a statutory body prescribed by the regulations.

by: (2) This Act applies to tenders invited, or purported to have been invited,

- (a) the Autonomous Bougainville Government, on or after the date of coming into operation of this Act; and
- (b) a public body or a statutory body, on or after the date of coming into operation of this Act, other than a public body or a statutory body prescribed by the regulations.

(3) This Act applies as if a reference in this Act to the Autonomous Bougainville Government were a reference to a public body or a statutory body, other than a public body or a statutory body prescribed by the regulations, or unless there is a contrary intention.

PART 2 – CONTRACTS.

4. EXECUTION OF AUTONOMOUS BOUGAINVILLE GOVERNMENT CONTRACTS.

(1) A contract or agreement that is to be entered into by or on behalf of the Autonomous Bougainville Government must be executed:

- (a) if the amount of the consideration exceeds K10,000,000.00, by the President, acting with, and in accordance with, the advice of the Bougainville Executive Council; or
- (b) if the amount of the consideration exceeds K500,000.00 but does not exceed K10,000,000.00, by the Chairperson of the Bougainville Tenders Board or of the Specialized Bougainville Supply and Tenders Board which considered the tender leading to the contract or agreement; or
- (c) if the amount of the consideration does not exceed K500,000.00, by the Chief Secretary.

(2) Any variation of the contract or agreement must be executed by the person with authority under Subsection (1) taking into account the increase (if any) in the amount of the consideration, for example, if the variation results in an increase in the consideration so that it exceeds K10,000,000.00, then the variation must be executed in accordance with Paragraph (1)(a).

(3) If a contract or agreement was executed by or on behalf of the Bougainville Interim Provincial Government and was transferred to the Autonomous Bougainville Government by virtue of Section 69 of the *Organic Law on Peace-Building in Bougainville - Autonomous Bougainville Government and Bougainville Referendum*, any variation thereto may be executed by the President, acting with, in accordance with, the advice of the Bougainville Executive Council, or by the Minister.

(4) If the amount of the consideration of a contract or agreement or of a variation to a contract or agreement to which the Autonomous Bougainville Government is a party exceeds K5,000,000.00, the Minister must cause a copy of the contract or agreement, or the variation, to be tabled at the first sitting of the House of Representatives after execution of the contract or agreement, or the variation.

(5) Subsection (1) does not apply to a statutory body (see Section 51 of the *Bougainville Public Finance (Management and Administration) Act 2014*.)

5. AUTHORITY TO PRE-COMMIT EXPENDITURE.

(1) The Finance Departmental Head may issue to a Head of another Department an Authority to Pre-commit Expenditure in relation to the purchase of property or stores or to the supply of goods or services if the Finance Departmental Head is satisfied that:

- (a) in the case of proposed expenditure exceeding K500,000.00:
 - (i) the provisions of Part 3 have been complied with in relation to the purchase or supply; and
 - (ii) funds will be available to meet the proposed 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 issue the Authority to Pre-Commit Expenditure despite 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 must 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.

6. CERTAIN CONTRACTS NULL AND VOID.

(1) A contract for the purchase of property or stores or for the supply of goods or services entered into, or purported to have been entered into, by or on behalf of the Autonomous Bougainville Government is null and void if:

- (a) an Authority to Pre-commit Expenditure has not been issued in respect of the purchase or supply; or
- (b) the provisions of this Act or the regulations made under this Act have not been complied with; or
- (c) the seller of the property or stores, or the supplier of the goods or services, colluded with any person to circumvent the provisions of any law in the awarding of the contract; or
- (d) the seller of the property or stores, or the supplier of the goods or services, or any person associated with the seller or supplier, participated in a corrupt practice or a fraudulent practice leading to the award of the contract; or
- (e) the seller of the property or stores, or the supplier of the goods or services, participated in a corrupt practice or a fraudulent practice that resulted in the failure to deliver the agreed property or stores, or the goods or services; or
- (f) for a contract the total value of which exceeds K500,000.00 including any extension or variation, the following information is not published in the Bougainville Gazette or a newspaper available throughout Bougainville within two month after the execution of the contract:
 - (i) the name of the contracting parties;
 - (ii) the property or stores to be sold, or the goods or services to be provided;
 - (iii) the value of the property or stores, or the goods or services;
 - (iv) the location for the delivery of the property or stores, or the goods or services;
 - (v) the requirements for payment, including any installments;
 - (vi) such other information prescribed by the regulations; or
- (g) the supplier of the goods or services received a mobilization payment or prepayment, but did not commence the supply of

the goods or services as contracted and the Autonomous Bougainville Government was not in any way responsible for the supply not commencing.

(2) The Autonomous Bougainville Government may recover by way of summary judgment in a court of competent jurisdiction all monies paid by it under any contract rendered null and void under this section.

(3) In this Section:

“Authority to Pre-Commit Expenditure” means an Authority to Pre-Commit Expenditure issued under Section 5;

“corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another person;

“fraudulent practice” means any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation;

7. CLAIMS AGAINST AUTONOMOUS BOUGAINVILLE GOVERNMENT NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

(1) In this Section, “Authority to Pre-Commit Expenditure” means an Authority to Pre-Commit Expenditure issued under Section 5.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods and services to the Autonomous Bougainville Government is not enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods or services produces an Authority to Pre-Commit Expenditure relating to the property or stores or goods or services, the subject of the claim, to the full amount of the claim.

(3) The provisions of this section apply if the property or stores were purportedly sold to the Autonomous Bougainville Government, or the goods or services were purportedly supplied to the Autonomous Bougainville Government, on or after the date of coming into operation of this Act.

PART 3 – TENDERS.

8. BOUGAINVILLE TENDERS BOARD.

- (1) The Bougainville Tenders Board is established to control and regulate:
- (a) the purchase and disposal of property and stores; and
 - (b) the supply of works and services,

other than those in relation to which specialized Supply and Tenders Boards have been established under Section 9, for and on behalf of the Autonomous Bougainville Government.

(2) In the exercise of its powers under Subsection (1), the Bougainville Tenders Board may invite a tender for any amount up to K10,000,000.00 for and on behalf of the Autonomous Bougainville Government.

(3) The Bougainville Tenders Board consists of the following five members:

- (a) the Chief Secretary (an officer nominated by the Chief Secretary to be his or her alternate), *ex officio*, who is to be the Chairperson;
- (b) the Departmental Head of the Department responsible for technical services (the Adviser, Technical Services to be his or her alternate), *ex officio*;
- (c) the Departmental Head of the Department responsible for planning (the Deputy Departmental Head of the Planning Department to be his or her alternate), *ex officio*;
- (d) the Departmental Head of the Department responsible for financial matters (the Deputy Departmental Head responsible for financial matters to be his or her alternate), *ex officio*;
- (e) a member (and his or her alternate) who has an unimpeachable and impeccable reputation and has relevant experience or demonstrated understanding of commercial or actual contracting practices, nominated by the Minister, appointed in accordance with Subsection (4).

(4) If the Bougainville Executive Council agrees with a nomination for membership of the Bougainville Tenders Board under Subsection (3)(e) from a list of three nominees submitted by the Minister, the nominee approved by the Bougainville Executive Council:

- (a) must be appointed as member of the Bougainville Tenders Board by the Bougainville Executive Council by notice in the Bougainville Gazette; and
- (b) must be appointed for a period of three years; and
- (c) holds office upon such terms and conditions as are determined by the Bougainville Executive Council; and
- (d) is eligible for re-appointment.

(5) At a meeting of the Bougainville Tenders Board:

- (a) the Chairperson, or in his or her absence, a person appointed by the members from their number present as Chairperson for the meeting, must preside; and

- (b) matters arising must be decided by a majority of the votes of the members present; and
- (c) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote; and
- (d) the quorum is three members; and
- (e) the procedures of the meeting are as determined by the Board.

(6) If, a contract is financed in whole or in part by a loan or grant from a foreign government, or an international agency or international organization, then a representative of that government, agency or organization may attend any meeting of the Bougainville Tenders Board considering that contract, and for the purposes of the meeting, he or she is deemed to be a member of the Bougainville Tenders Board.

(7) The Bougainville Executive Council may at any time terminate the appointment of the member of the Bougainville Tenders Board under Paragraph (3)(e), on the grounds of ill health, corruption, incompetence or impropriety and may appoint another person in his or her place in accordance with Subsection (4).

(8) In respect of the Bougainville Tenders Board, the Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing:

- (a) the manner of inviting tenders publicly; and
- (b) the method of dealing with tenders; and
- (c) the criteria to be applied in the evaluation of tenders; and
- (d) the appointment by the Board of advisers in technical matters; and
- (e) the keeping by the Board of records of the performance of each successful tender; and
- (f) the manner of regulating the disposal of property no longer required by the Autonomous Bougainville Government; and
- (g) the method of obtaining and dealing with quotations for -
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of goods and services; and
- (h) the manner in which the Board must supervise the operations of any Specialized Bougainville Supply and Tenders Board established under Section 9.

9. SPECIALIZED BOUGAINVILLE SUPPLY AND TENDERS BOARDS.

(1) The Minister may exercise the powers provided for under this Section, subject to the approval of the Bougainville Executive Council.

(2) The Minister may, by notice in the Bougainville Gazette, establish such number of Specialized Bougainville Supply and Tenders Board for:

- (a) specific technical or specialized purposes; or
- (b) specific purposes related to natural or man-made disasters that warrant the establishment of Specialized Supply and Tenders Boards; or

as he or she, on the advice of the Finance Departmental Head, thinks necessary to control and regulate, in respect of such technical or specialized purposes or disasters:

- (c) the purchase and disposal of property and stores; and

(d) the supply of works and services;
for any amount up to K5,000,000.00 or such lesser amount as the Minister may determine by notice in the Bougainville Gazette, for and on behalf of the Autonomous Bougainville Government.

(3) The Minister may, by notice in the Bougainville Gazette, establish a Specialized Bougainville Supply and Tenders Board as a condition of a loan or grant to the Autonomous Bougainville Government.

(4) The Minister may make Rules, not inconsistent with this Act or the Financial Instructions, prescribing, in relation to a Board established under this Section:

- (a) the procedures for meetings of the Board including fixing of quorum; and
- (b) the manner of inviting tenders publicly; and
- (c) the method of dealing with tenders; and
- (d) the criteria to be applied in the evaluation of tenders; and
- (e) the appointment by the Board of advisers in technical matters; and
- (f) the keeping by the Board of records of the performance of each successful tenderer; and
- (g) the method of obtaining and dealing with quotations for -
 - (i) the purchase and disposal of property and stores; and
 - (ii) the supply of works and services; and
- (h) the manner of regulating the disposal of property and stores no longer required by the Autonomous Bougainville Government.

(5) The Minister may, from time to time, issue to Boards established under Subsection (1) policy directions as to the giving of preference to Bougainville or national tenderers and local manufacturers, and such directions are binding on Boards.

(6) In the event of the absence of a member of a Board from a meeting of the Board or his or her inability for any reason to act in relation to a matter, his or her alternate has and may exercise and perform all his powers and functions for the purpose of that meeting or in relation to that matter.

(7) The Minister may, at any time, by written notice to a member or the alternate of a member, remove the member or alternate, as the case may be, and appoint another in his or her place.

(5) This Section does not apply to a statutory body (see Section 49 of the *Bougainville Public Finance (Management and Administration) Act 2014*.)

10. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES.

(1) Subject to this section and Section 11, tenders must be publicly invited and contracts let for the purchase or disposal of property or stores, and the supply of works or services, the estimated costs of which exceeds the prescribed amount.

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

(3) Subsections (1) and (2) do not apply to the purchase or disposal of property or stores, or the supply of works or services:

- (a) that are to be purchased from, disposed of or to, or executed or performed by:
 - (i) the Autonomous Bougainville Government or the State; or
 - (ii) a public body or statutory body; or
 - (iii) a Provincial Government or Local-level Government; or
 - (iv) a foreign government, or an international organization or international agency, approved by the Minister; or
- (b) in respect of which a Board certifies that the inviting of tenders is impracticable or inexpedient; or
- (c) if, in individual transactions involving amounts not exceeding K500, 000.00, the Chief Secretary in his or her 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 describes the special circumstances and waives the provisions of this section; or
- (d) if the terms of an agreement concluded, or proposed to be concluded, with any international organization under which the Autonomous Bougainville Government or 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 relation to contracts for the supply of works or services, the provisions of this section and Section 11 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.

11. PREFERENCE TO NATIONAL TENDERERS.

If a Board is satisfied that the value of a contract is not likely to exceed K1,000,000.00 or such lesser amount as the Minister directs, it may by written order direct that tenders be restricted to Bougainville or national tenderers (in which case the provisions of Section 10 apply to that contract).

12. CONSIDERATION OF TENDERS.

(1) The Secretary of a Board must not submit tenders to the Board unless he or she has complied with the due diligence requirements prescribed by the regulations for the consideration of tenders by a Board.

(2) Subject to Subsection (1), the Secretary of the Board must, as soon as practicable after the closing date for the receipt of tenders, prepare for the

Chairperson details in schedule form of the tenders received for presentation to the Board at the meeting at which the tenders are to be considered.

- (3) The Board must:
- (a) co-opt, or seek the advice of, persons with specialized knowledge to assist the Board in its consideration of tenders received; and
 - (b) consider a tenderer in the light of conditions of tenders and the specifications and plans (if any) of the matter or thing in respect of which tenders were invited; and
 - (c) apply to the consideration of all tenders the criteria supplied by the Minister.

(4) Any representations by a tenderer to amend a tender after the closing time for tenders must be immediately reported to the Board.

(5) In examining a tender, the Board must give consideration to the capacity, experience, integrity, financial status and past performance of the tenderer and such other matters as it thinks relevant.

(6) If, in the opinion of the Board, it is in best interests of the Autonomous Bougainville Government to do so, the Board may, subject to the Rules:

- (a) if the amount of the tender does not exceed the prescribed amount:
 - (i) accept a tender; and
 - (ii) reject all other tenders;and the reasons for the acceptance and rejection must be detailed in the minutes of the meeting of the Board; and
- (b) if the amount of the tender exceeds the prescribed amount recommend to the Minister responsible:
 - (i) the acceptance of the tender; and
 - (ii) the rejection of all other tenders;and the reasons for the recommendation must be detailed in the minutes of the meeting of the Board.

(7) If a Minister receives a recommendation from a Board under Paragraph (6)(b), he or she must submit to the Bougainville Executive Council the recommendation together with particulars of other tenders received and the Bougainville Executive Council must decide which tender is to be accepted.

- (8) If, after consideration of the tenders:
- (a) two or more tenders appear satisfactory; and
 - (b) in the opinion of the Board, there is no advantage to the Autonomous Bougainville Government in preferring a particular satisfactory tender over the other satisfactory tenders:
- the Board must take action under Paragraph 9(a) or (b).

(9) The Board:

- (a) if the amount of a tender does not exceed the prescribed amount, must:
 - (i) accept one or more tenders; or
 - (ii) divide the acceptance between two or more satisfactory tenders to ensure as far as practicable a fair division of business within an area; and
 - (b) if the amount of tender exceeds the prescribed amount, must recommend to the Minister responsible:
 - (i) the acceptance of a satisfactory tender; or
 - (ii) the division of acceptance between two or more of the satisfactory tenders to ensure as far as practicable a fair division of business within an area;
- and must record the reasons for its decision in the minutes of the Board meeting.

(10) If a Minister receives a recommendation under Paragraph (9)(a) or (b), he or she must submit to the Bougainville Executive Council the recommendation together with particulars of all tenders received and the Bougainville Executive Council must decide which tender or tenders are to be accepted.

(11) Nothing in this section derogates from any other provisions of this Act or from any other law requiring a written contract or agreement to be entered into in respect of the subject of a tender.

13. FORM OF RECOMMENDATION BY BOARD.

A recommendation by the Board must be:

- (a) in the form of a submission containing the reasons for the recommendation; and
- (b) accompanied by:
 - (i) the tender notice; and
 - (ii) the conditions of tender; and
 - (iii) specifications and plans (if any) of the matter or thing in respect of which tenders were invited; and
 - (iv) the tenders received and considered.

14. NOTICE OF SUCCESSFUL TENDER.

After notice of the acceptance of a tender has been communicated to a successful tenderer, the Chairperson of the Board must cause notice of the acceptance of the tender to be:

- (a) sent to all tenderers for the matter or thing to which the tender relates; and
- (b) published in the Bougainville Gazette.

15. SECRECY.

A member of a Board, the Secretary of a Board, a witness and a person co-opted to give advice to or assist the Board must not discuss or divulge the contents of a tender in respect of any matter or things, except in the course of:

- (a) recording details of the tender in the Tenders Register; or
- (b) preparing a notice of acceptance of a late tender; or
- (c) giving advice to the Board on the tender; or

- (d) consideration of the tender at a meeting of the Board; or
 - (e) making a recommendation that involves reference to the tender;
- or
- (f) causing notice of the acceptance of the tender to be sent to other tenderers or published in the Bougainville Gazette.

Penalty: A fine not exceeding K10,000.

PART 4 – MISCELLANEOUS.

16. DISCIPLINARY OFFENCES.

A Departmental Head, the head of a public body or statutory body, or other officer who authorizes or permits a breach of procedures relating to the:

- (a) calling, consideration and awarding of tenders; or
- (b) the execution of an Autonomous Bougainville Government Contract;

is, for the purposes of the *Bougainville Public Services (Management and Administration) Act 2014*, guilty of a serious disciplinary offence and must be dealt with in accordance with Part 10 of that Act.

17. FINANCIAL MISCONDUCT.

If an officer:

- (a) fails to comply with a requirement of this Act or the Financial Instructions; or
- (b) enters into a contract or agreement, or invites a tender, that is not authorised by or under this Act; or
- (c) recklessly or negligently enters into a contract or agreement, or invites a tender;

the officer commits an act of financial misconduct and is, for the purposes of the *Bougainville Public Services (Management and Administration) Act 2014*, guilty of a serious disciplinary offence and must be dealt with in accordance with Part 10 of that Act and the General Orders made under that Act.

18. SERIOUS FINANCIAL MISCONDUCT.

(1) If an officer, in relation to a contract for the purchase of property or stores, or for the supply of goods or services:

- (a) colludes with any person to circumvent the provisions of any law in the awarding of the contract; or
- (b) participates in a corrupt practice or a fraudulent practice leading to the award of the contract; or
- (c) participates in a corrupt practice or a fraudulent practice that results in the failure to deliver the agreed property or stores, or the goods or services;

the officer is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding 5 years, or both.

(2) An officer who commits an offence against a provision referred to in Subsection (1) is, for the purposes of the *Bougainville Public Services (Management and Administration) Act 2014*, guilty of a serious disciplinary offence and may also be dealt with under Part 10 of that Act and the General Orders made under that Act.

(3) If a person, other than a person authorised by or under this Act:

- (a) borrows or purports to borrow money; or
- (b) issues or purports to issue an indemnity or security or other prescribed financial instrument; or

(c) enters into or purports to enter into a contract for a future financial commitment;
for or on behalf of the Autonomous Bougainville Government, the person is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding 5 years, or both.

(4) A person who aids, abets, counsels or procures the commission of an offence against Subsection (1) or (3) by another person is taken to have committed that offence and is punishable accordingly.

19. REGULATIONS.

The Bougainville Executive Council, may make regulations, not inconsistent with this Act, prescribing all matters that:

- (a) by this Act are required or permitted to be prescribed; or
- (b) are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

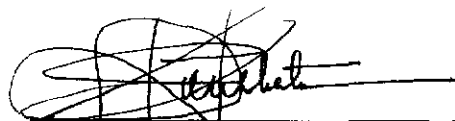
20. REPEAL.

The *Autonomous Bougainville Government Contracts Act 2006* is repealed.

Certifications

I certify that the foregoing is a fair copy of the *Bougainville Government Contracts and Tenders Act 2014* which has been made by the House of Representatives.

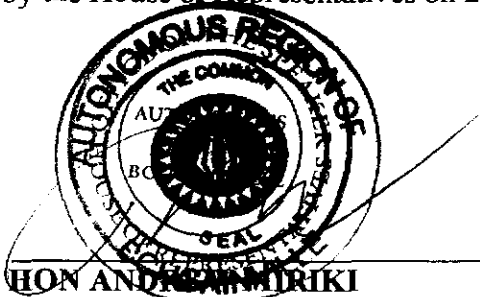
Dated this 3rd day of April 2014



EDWIN KENAHATA
Acting Clerk of the House of Representatives

In accordance with Sections 66 and 180(3) of the *Bougainville Constitution* and Section 302(2)(d) of the Papua New Guinea Constitution, I, *Hon Andrew Miriki*, Speaker of the House of Representatives, certify that the *Bougainville Government Contracts and Tenders Act 2014* was made by the House of Representatives on 2nd April 2014 by an absolute majority vote.

Dated this 3rd day of April 2014



HON ANDREW MIRIKI
Speaker of the House of Representatives