

REPUBLIC OF KIRIBATI
Public Procurement (Amendment) Bill 2026
Draft v1 — for consultation

A Bill to amend the Public Procurement Act 2019
Prepared as legislative drafting support under the ADB Technical Assistance project
TA-9994 REG: Supporting Public Sector Management Reforms - 003 Procurement Specialist (Regional) (54060-001)

Not legal advice.

The contents of this package include:

- Scope Map
- The Bill
- Explanatory Memorandum
- Companion Note — Regulations & Manual

Introduction

This Bill responds to the Government’s request to review and amend the *Public Procurement Act 2019*, with its Regulations and Manual, to (i) integrate Sustainable Public Procurement, (ii) introduce Electronic Government Procurement, and (iii) make other amendments improving efficiency, transparency and sustainability. In the course of that review the drafters also identified legal-quality defects and integrity gaps, evidenced by the 2025 award-decision data, and addressed them here.

Clauses are tagged **[A] legal-quality**, **[B] integrity/governance**, or **[C] modernisation**. Recommended baseline: retain all [A] and [B]; consider all [C] clauses optional with the decision to retain at the Government’s discretion as the concepts may alternatively be delivered through the Regulations if a narrower Act is preferred; two clauses (sections 13 and 35) are drafter-initiated improvements the Government may decline.

Cl.	Section	What it does	Tier	Recommend
1–2	Short title	Corrects citation to Public Procurement Act 2019	A	Retain
3	s.2	Binds SOEs / statutory bodies (relocated from s.39A)	A	Retain
4	s.3	Expands “Procuring Entity”; defines “head of the Procuring Entity” and “family”	A/B	Retain
5	s.4	Restated principles (+ accountability, proportionality, firmed sustainability)	A	Retain
6	s.6 repeal	Planning re-enacted in Part IIA	C	Mandate (efficiency)
7	s.8 repeal	Relocated to s.34A	A	Retain
8	s.9	Records: decision, accountable officer, justification, value	B	Retain
9	s.10 / s.13	Proactive publication of award data (s.10); annual report to Audit Office (s.13)	C	Elective
10	s.10A	Electronic procurement — legal equivalence	C	Mandate (e-GP)
11	s.10B	Sustainable procurement enabling power	C	Mandate (SPP)
12	s.14A	Chief Procurement Officer	A	Retain
13	s.15	Senior Procurement Officer	A	Retain
14	Part IIA	Planning (19A–19D); anti-splitting (19C)	C/B	Mandate (efficiency)
15	s.20	Principle of choice — proportionate competition	C	Mandate (efficiency)
16	s.24	Sole-source justification; mandatory thresholds / reporting	B	Retain
17	s.24A	Additional methods (open list)	C	Mandate (efficiency)
18	s.25	Model Documents → Senior Procurement Officer	A	Retain
19	s.27	Electronic public opening	C	Mandate (e-GP)
20	s.28	Non-price / quality / sustainability evaluation firming	B	Retain
21	s.28A	Abnormally low bids	B	Retain
22	s.34A	Effect of Contract and signing dates (relocated s.8)	A	Retain
23	s.35	Contract management: named manager, variation control	C	Elective
24	s.37	Officer conduct duties	B	Retain

Cl.	Section	What it does	Tier	Recommend
25	s.37A	Conflict-of-interest regime (CPO escalation; OAG proviso)	B	Retain
26	s.38	Anti-corruption mechanics → Senior Procurement Officer	B	Retain
27	s.39A repeal	Orphaned; re-enacted in s.2	A	Retain

Clauses 6 and 13 are a pair — repealing s.6 only makes sense if Part IIA is retained. Section 19C (anti-splitting) is integrity-tier; if planning is not adopted it should be relocated to s.9 or s.24.

The Bill

REPUBLIC OF KIRIBATI

AN ACT TO AMEND THE PUBLIC PROCUREMENT ACT 2019

1. Short title — [A]

This Act may be cited as the Public Procurement (Amendment) Act 20[].

2. Meaning of “principal Act” — [A]

In this Act the principal Act means the Public Procurement Act 2019.

3. Amendment of section 2 — [A]

Section 2 is amended by inserting after subsection (2) —

(3) This Act binds all State-Owned Enterprises and statutory corporations and authorities.

(4) The bodies to which subsection (3) applies, and the procurement processes they are to follow, shall be prescribed by the Regulations.

4. Amendment of section 3 — [A/B]

Section 3 is amended —

(a) the definition of “Chief Procurement Officer” is repealed and substituted with -

means the Secretary responsible for Finance;

(b) the definition of “Social Considerations” is repealed and substituted with

"Social Considerations" means, but is not limited to, environmental protection; energy and water efficiency; climate change mitigation, adaptation and resilience; gender equality; decent and safe working conditions; the prevention of child labour; accessibility for persons with disabilities; the social inclusion of indigenous people; and the reduction of unemployment.

(c) in the definition of “Procuring Entity”, by inserting after “engages in Public Procurement” the words “, and includes a State-Owned Enterprise or a statutory corporation or authority that is bound under section 2”; and

(d) by inserting in their appropriate alphabetical places —

“Family”, in relation to a person, includes that person’s immediate family within the meaning of the Leaders Code of Conduct Act 2016, and also a parent-in-law, child-in-law or sibling-in-law, a person in a de facto relationship with the person, and any other person connected to the person by blood, marriage, adoption or custom whose interest could reasonably be perceived to affect the person’s impartiality;

“Head of the Procuring Entity” means the chief executive officer, permanent secretary, general manager or other person who for the time being has the principal management responsibility for the Procuring Entity, and includes a person to whom that responsibility is lawfully delegated.

5. Amendment of section 4 — [A]

Section 4 is repealed and substituted with —

4. Principles of public procurement

(1) All Public Procurement shall be planned, conducted and managed so as to give effect to the following principles —

- (a) value for money — achieving the optimum combination of whole-of-life cost and quality to meet the purpose of the Public Procurement, using Public Funds economically, efficiently and effectively;
- (b) transparency — conducting Public Procurement openly, on the basis of clear and published rules, criteria and decisions, subject only to the protection of information of a genuinely confidential nature;
- (c) competition — promoting open and effective competition, to the extent practicable having regard to the size and capacity of the relevant market;
- (d) fairness and equal treatment — treating all Economic Operators fairly and without discrimination, save for any domestic preference applied under section 7;
- (e) integrity — conducting Public Procurement honestly and ethically, free from Corrupt Practices, fraud and Conflict of Interest;
- (f) accountability — ensuring that those who decide and manage Public Procurement are answerable for their decisions, supported by adequate records kept under section 9;
- (g) proportionality — applying procedures and controls proportionate to the value, risk and complexity of the Public Procurement; and
- (h) sustainable and social value — advancing the Social Considerations of the people of Kiribati and contributing to national development priorities.

6. Repeal of section 6 — [C]

Section 6 (Annual Procurement Planning) is repealed; its subject-matter is re-enacted, with modifications, in Part IIA.

7. Insertion of section 7A — [C]

Part I is amended by inserting after section 10A —

10B. Sustainable public procurement

(1) Public Procurement shall, consistently with value for money, have regard to the Social Considerations of the people of Kiribati, in accordance with the principle in section 4(1)(h).

(2) The Minister may make Regulations for sustainable public procurement, including for —

- (a) the inclusion of life-cycle cost and environmental, social and economic considerations in the planning, specification, evaluation and management of Public Procurement;
- (b) criteria and methods for assessing sustainability and whole-of-life value, including life-cycle costing and life-cycle assessment;
- (c) preferences or requirements supporting the development of domestic Economic Operators, consistently with section 7; and
- (d) the giving of effect to a Sustainable Public Procurement Policy issued under the Regulations.

(3) Nothing in this section authorises a departure from the requirement to achieve value for money in the public interest.

8. Repeal of section 8 — [A]

Section 8 (Non-retroactivity) is repealed; its substance is re-enacted in section 34A.

9. Amendment of section 9 — [B]

Section 9 is repealed and substituted with —

9. Record keeping

(1) A Procuring Entity shall maintain a complete and accurate record of every Public Procurement it conducts, in line with this Act and the Government of Kiribati Finance Regulations.

(2) The record for each Public Procurement shall include —

- (a) the procurement method used and, where a Single Source procedure is used, the written justification required under section 24;
- (b) the award decision and the reasons for it;
- (c) the name of the public officer accountable for the decision; and
- (d) the approved Contract value.

(3) Records under this section shall be retained for the period prescribed by the Regulations and made available to the Kiribati Audit Office under section 13.

10. Insertion of section 10A — [C]

Part I is amended by inserting after section 10 —

10A. Electronic procurement

(1) Public Procurement may be conducted in whole or in part by electronic means.

(2) An electronic submission, signature, document or record used in Public Procurement has the same legal effect as its physical equivalent, and shall not be denied legal effect solely because it is in electronic form.

(3) The Minister may make Regulations for electronic Public Procurement, including for the security and confidentiality of electronic submissions before opening, the protection and retention of supplier data consistently with the law relating to data protection, and the conduct of Public Procurement through an electronic platform.

(4) This section applies despite any requirement in this Act or the Regulations that a step in Public Procurement be done in physical form.

11. Insertion of section 14A (Chief Procurement Officer) — [A]

Section 13 is amended by designating the existing provision as subsection (1) and inserting —

(1) The Chief Procurement Officer is the Secretary responsible for Finance and is the head of the public procurement system, responsible for its oversight, regulation and integrity and for the approvals conferred by this Act and the Regulations.

(2) The Chief Procurement Officer has charge of the Central Procurement Unit and exercises oversight and approval functions separately from the operational functions of the Senior Procurement Officer, in accordance with the rules established by the Regulations.

13. Amendment of section 15 (Senior Procurement Officer) — [A]

Section 15 is repealed and substituted with —

15. Senior Procurement Officer

(1) The Senior Procurement Officer is the senior officer of the Central Procurement Unit and leads the operational conduct of Public Procurement and the support provided to Procuring Entities.

(2) The Senior Procurement Officer shall possess the highest level of integrity and shall have no Conflict of Interest, and shall exercise operational functions separately from the oversight and approval functions of the Chief Procurement Officer, in accordance with the rules established by the Regulations.

14. Insertion of Part IIA — [C; 19C is B]

The principal Act is amended by inserting after Part II —

PART IIA — PROCUREMENT PLANNING

19A. Procurement planning

(1) Each Procuring Entity shall plan its Public Procurement so as to give effect to the principles in section 4, and in particular to value for money, competition and proportionality.

(2) In planning its Public Procurement, a Procuring Entity shall —

(a) carry out a needs assessment of its requirements in advance of initiating Public Procurement, including the whole-life and sustainability needs to be met;

b) undertake market scoping, having regard to the conditions, capacity and sustainable options of the relevant market, and may engage with the market, including by a request for information, without distorting competition or conferring an unfair advantage on any Economic Operator;

(c) identify requirements that are common, recurring or capable of aggregation, and consider whether they are better met through a framework agreement or pooled procurement under section 20A; and

(d) identify the procurement method proposed for each significant requirement, having regard to section 20.

(3) Planning under this section shall be carried out in accordance with the Regulations.

19B. Annual Procurement Plan

(1) Before each fiscal year, and in accordance with the Regulations, each Procuring Entity shall submit to the Central Procurement Unit, in writing, a forecast of its expected Public Procurement needs for the following fiscal year, prepared on the basis of its planning under section 19A.

(2) Following budget approval, the Central Procurement Unit shall consolidate the forecasts of all Procuring Entities and publish an Annual Procurement Plan.

(3) In consolidating the Annual Procurement Plan, the Central Procurement Unit shall identify opportunities for aggregation, framework agreements and pooled procurement across Procuring Entities.

(4) The Annual Procurement Plan may be updated during quarterly budget reviews where adjustments to a Procuring Entity's requirements are needed following budget approval.

(5) Public Procurement shall not be initiated unless it is provided for in the Annual Procurement Plan, except — (a) in the case of emergency procurement under section 20A; or (b) as otherwise permitted by the Regulations, and any such Public Procurement shall be recorded and reflected in the next update of the Plan.

19C. Prohibition on splitting

A Procuring Entity shall not divide, structure, describe or time a Public Procurement with the effect of —

- (a) avoiding the use of an open competitive method;
- (b) bringing the Public Procurement below a threshold prescribed by the Regulations; or
- (c) evading a requirement for approval, justification or reporting under this Act or the Regulations.

19D. Planning and availability of funds

Planning under this Part shall be consistent with section 5, and the inclusion of a requirement in the Annual Procurement Plan does not authorise the initiation of Public Procurement unless Public Funds are allocated and approved in accordance with that section.

15. Amendment of section 20 — [C]

Section 20 is repealed and substituted with —

20. Principle of choice

(1) A Procuring Entity shall initiate Public Procurement using an open competitive method under section 21, unless another method is justified in accordance with this Act.

(2) In selecting a procurement method, a Procuring Entity shall act consistently with the principles in section 4, and in particular shall choose a method proportionate to the value, risk and complexity of the Public Procurement and to the capacity of the relevant market, while preserving competition to the extent practicable.

(3) A method other than open competitive tendering may be used only where this Act so provides, including under sections 20A, 23 and 24, and subject to the conditions, thresholds and safeguards prescribed by the Regulations.

16. Amendment of section 24 — [B]

Section 24 is amended by designating the existing provision as subsection (1) and inserting —

(2) A Procuring Entity that uses a Single Source procedure shall record a written justification demonstrating how the Public Procurement meets one or more of the grounds in subsection (1), and shall retain it in the record kept under section 9.

(3) The Regulations shall prescribe value thresholds above which a Single Source justification requires the approval of the Central Contract Award Board, and shall provide for periodic reporting by the Chief Procurement Officer to the Minister on the use of Single Source procedures.

17. Insertion of section 24A — [C]

Part III is amended by inserting after section 24 —

24A. Additional procurement methods

(1) In addition to the procedures in sections 21 to 24, a Procuring Entity may use any of the following procurement methods, as prescribed by the Regulations —

- (a) a framework agreement;
- (b) pooled or aggregated procurement;
- (c) request for quotations;
- (d) repeat order;
- (e) emergency procurement;
- (f) procurement through a public international organisation, another government, or a procurement agency of either; and
- (g) any other method prescribed by the Regulations that is consistent with the principles in section 4.

(2) A method under subsection (1) may be used only in accordance with the conditions, thresholds and safeguards prescribed by the Regulations, and shall preserve competition to the extent practicable.

(3) Emergency procurement shall be subject to a written justification, a time limit, and reporting to the Office of the Attorney General and the Kiribati Audit Office, as prescribed by the Regulations.

18. Amendment of section 25 — [A]

Section 25 is amended by substituting “Senior Procurement Officer” for “Chief Procurement Officer” wherever it appears.

19. Amendment of section 27 — [C]

Section 27 is amended by inserting at the end —

“Without limiting section 10A, a public opening under this section may be conducted by electronic means in accordance with the Regulations; and an electronic opening that allows interested parties to observe, or that results in the prompt publication of the opening record, satisfies the requirement for opening in public.”

20. Amendment of section 28 — [B]

Section 28(2) is amended by inserting after paragraph (d) —

“which may take into account non-price criteria, including quality and sustainability, as prescribed by the Regulations.”

21. Insertion of section 28A — [B]

Part IV is amended by inserting after section 28 —

28A. Abnormally low bids

- (1) Where a Tender appears to be abnormally low in relation to the goods, services or works to be provided, such that the Procuring Entity has reasonable doubt about the Tenderer's ability to perform the Contract at the Tender price, the Procuring Entity may examine the Tender in accordance with the Regulations.
- (2) The Procuring Entity shall, before rejecting the Tender on this ground, request the Tenderer in writing to explain the price or cost, and shall consider the explanation.
- (3) The Procuring Entity may reject the Tender only where the explanation does not satisfactorily account for the low price or cost, and shall record its reasons in the record kept under section 9.
- (4) This section does not limit any other power to reject a Tender or cancel a Public Procurement under this Act or the Regulations.
- (5) The Regulations may prescribe the method for identifying and assessing an abnormally low Tender.

22. Insertion of section 34A — [A]

Part VI is amended by inserting after section 34 —

34A. Effect of Contract and signing dates

- (1) A Contract takes effect from the date of signature of the last signatory party.
- (2) Every Contract shall reflect the actual dates on which the contracting parties signed it.

23. Amendment of section 35 — [C; elective]

Section 35 is amended by designating the existing provision as subsection (1) and inserting —

- (2) Each Procuring Entity shall designate a person responsible for managing each Contract, who shall monitor the compliance and performance of the Economic Operator against the terms and conditions of the Contract and maintain records of performance in the record kept under section 9.
- (3) A variation to a Contract shall be made only in accordance with the Regulations, shall be justified in writing and recorded, and shall not be used to award additional work that ought properly to be the subject of a separate Public Procurement.
- (4) Where contract performance or a proposed variation gives rise to a suspicion of a Corrupt Practice, the Procuring Entity shall act in accordance with section 38.

24. Amendment of section 37 — [B]

Section 37 is amended by inserting after subsection (2) —

- (3) Every Procurement Officer and other public officer executing Public Procurement shall act with the highest integrity, impartiality and objectivity, shall avoid and declare any Conflict of Interest in accordance with section 37A, and shall protect information of a confidential nature in accordance with the Regulations.

25. Insertion of section 37A — [B]

Part VIII is amended by inserting after section 37 —

37A. Conflict of interest

- (1) A Conflict of Interest arises where a person involved in Public Procurement has a personal, financial, family, professional or other interest that affects, or could reasonably be perceived to affect, the impartial and objective performance of that person's functions.
- (2) A public officer involved in Public Procurement who has, or becomes aware that they may have, a Conflict of Interest shall declare it in writing to the head of the Procuring Entity as soon as they become aware of it, and shall take no further part in the Public Procurement pending a decision under subsection (3) or (4).
- (3) On receiving a declaration, the head of the Procuring Entity shall manage the Conflict of Interest by recusal, reassignment, or any other measure that adequately removes or mitigates it, and shall record the decision and reasons in the record kept under section 9.
- (4) Where the Conflict of Interest cannot be adequately managed within the Procuring Entity, including where no other officer is available to perform the function, the head of the Procuring Entity shall refer the matter to the Chief Procurement Officer, who may direct a measure under subsection (3), arrange for another person to perform the function, or, where no other practicable option exists, authorise the officer to continue subject to recorded safeguards.
- (5) Where the Conflict of Interest concerns the Chief Procurement Officer, or concerns a Public Procurement before the Central Contract Award Board on which the Chief Procurement Officer sits, the matter shall instead be referred to the Office of the Attorney General, which may exercise the powers in subsection (4).
- (6) Each Procuring Entity shall maintain a register of declarations and decisions under this section, to which the Central Procurement Unit shall have access; and information in a declaration shall be treated as confidential and used only for managing Conflict of Interest, audit, oversight or investigation.
- (7) A Procuring Entity shall include in the Invitation to Tender an obligation for each Tenderer to declare any Conflict of Interest. Where an Economic Operator has gained an unfair advantage, including through involvement in preparing the requirements, or is associated with another Tenderer in a way that distorts competition, the Procuring Entity shall exclude it unless the advantage can be effectively neutralised by proportionate means that are recorded.
- (8) A public officer who fails to declare a Conflict of Interest as required by this section is liable for administrative misconduct under section 39, without prejudice to any liability under section 38 or any other written law; and a decision materially affected by an undisclosed Conflict of Interest may be reviewed and, where appropriate, set aside.
- (9) Where a Tenderer fails to disclose a Conflict of Interest or makes a false declaration under subsection (7), the Procuring Entity shall reject its Tender; and where this comes to light after award, the Procuring Entity may terminate the Contract.

26. Amendment of section 38 — [B]

Section 38 is amended —

- (a) by repealing Section 38(3) and renumbering all subsequent subsections accordingly;
- (b) by inserting after subsection 38(4) —

(4) The Chief Procurement Officer shall immediately conduct a preliminary investigation into the matter and shall, if it is determined that there is any credible evidence indicating that such a violation has

occurred, immediately refer the matter to the Office of the Attorney General. If requested by the informant, the Chief Procurement Officer shall take measures to protect the identity of the informant.

(b) by inserting after the last subsection —

(6) A Procuring Entity shall include in every Invitation to Tender an obligation for each Tenderer to sign a written declaration that it is not engaged in, and will not engage in, any Corrupt Practice or other criminal activity in connection with the Public Procurement.

(7) Where a Procuring Entity has reasonable grounds to suspect a Corrupt Practice, it shall suspend the Public Procurement and notify the Chief Procurement Officer; and where a Corrupt Practice is established in relation to an awarded Contract, the Procuring Entity shall terminate the Contract, unless termination would be contrary to the public interest, in which case it shall record its reasons and the alternative measures taken.

(8) In discharging the functions under this section, the Chief Procurement Officer shall keep the Kiribati Audit Office informed of any Corrupt Practice suspected or established in Public Procurement, in accordance with section 13.

27. Proposed new section 38A

Part VIII is amended by inserting after section 38 —

38A. Ineligibility and debarment

(1) The Chief Procurement Officer may declare an Economic Operator ineligible to participate in Public Procurement (debarment) for a specified period where the Economic Operator, or any of its personnel, agents or sub-contractors, has —

(a) engaged in a corrupt, fraudulent, collusive, coercive or obstructive practice (a “prohibited practice”) in competing for or performing a Contract; or

(b) been sanctioned or debarred by the United Nations, a multilateral development bank, or a financier of Public Procurement.

(2) A debarment shall not exceed [seven] years for any single determination and shall be proportionate to the gravity of the conduct.

(3) Before debarring an Economic Operator, the Chief Procurement Officer shall give it written notice of the grounds and a reasonable opportunity to respond, and shall consider any response.

(4) An Economic Operator that is debarred may apply to the [Procurement Complaints Board / High Court] for review of the decision within [21] days of being notified.

(5) The Chief Procurement Officer shall maintain a public list of debarred Economic Operators; and a Procuring Entity shall exclude a debarred Economic Operator from Public Procurement during the period of debarment.

(6) This section is in addition to, and does not limit, any criminal liability under section 38 or the Penal Code.

(7) The Regulations may define prohibited practices and prescribe the criteria, periods and procedure for debarment and for reviews under this section.

Repeal of section 39A — [A]

Section 39A (inserted by the Procurement (Amendment) Act 2021), the substance of which is re-enacted by section 3 of this Act, is repealed.

Explanatory Memorandum

This Bill responds to the Government's request to review and amend the *Public Procurement Act 2019*, together with its Regulations and Manual, to:

- (i) integrate Sustainable Public Procurement,
- (ii) introduce Electronic Government Procurement, and
- (iii) make other amendments to improve efficiency, transparency and sustainability.

In the course of that review, other legal-quality defects and integrity gaps were identified, as evidenced by the 2025 award-decision data, and have been addressed in the draft amendment text here. The rationale for each clauses of the Amendment Act are marked between:

- Reform Focus [A] legal-quality,
- Reform Focus [B] integrity/governance, or
- reform Focus [C] modernisation.

This design is intended to enable the Government of Kiribati to see the breadth of potential updates to the Public Procurement Act, while providing the flexibility to show which clauses are necessary vs. optional. The recommended baseline is to retain all [A] and [B] clauses; while the [C] clauses are optional leaving it to the Government's own discretion whether to retain the proposed clauses in the Act or instruct that these details be delivered through the Regulations.

Focus [A]: Amendments to improve legal drafting quality

Clauses 1–2 correct the Act's citation: section 1 of the principal Act cites it as the *Public Procurement Act 2019*; the *Procurement (Amendment) Act 2021* mis-cited it.

Clauses 3, 4 and 26 move the SOE-binding rule from the orphaned section 39A near the end of the Act into section 2 Application section at the beginning of the Act. The "Procuring Entity" definition has been updated to be consistent with the Leaders Code of Conduct Act 2016, which already defines "Government agency" to include all State-Owned Enterprises.

Clause 5 rebuilds section 4, which contains a mix of principles and operative rules; the new section states the principles cleanly and concisely, adds modern procurement principles of “accountability” and “proportionality”.

The General Principles section contained several clauses that would be better presented elsewhere:

- The detailed text on conflict of interest procedures in section 5 has been deleted and the duties of public officers giving effect to these principles have been moved and expanded in section 37 Conflict of Interest within Part VIII Misconduct.
- Clauses 7 and 21 relocate the contract-effect rule from section 8 in Part I General Principles to

Contract section 34A in Part VI Contracts and Contract Management, with an accurate marginal note.

Clause 17 returns Model-Document control to the Senior Procurement Officer, as this operational task is better suited for the SPO rather than the Chief Procurement Officer.

Focus [B]: Amendments to improve Integrity/governance

Clause 8 (section 9 Record-keeping) has been made more robust with stronger accountability mechanisms in response to the analysis of the 2025 Kiribati Procurement Data that found that about half of committee decisions recorded neither an award decision nor a named accountable officer.

Clause 12 (section 19) gives the Procurement Complaints Board a statutory backbone — independence, a right to complain, suspension of award pending complaint, and remedies — addressing the absence of an effective challenge mechanism.

Clause 16 (section 24 on Single-Source Procurements) responds to the analysis of the 2025 Procurement Data that single-source procurement accounts for 68% of award value, and one contractor's four sole-source awards totaled \$46.9M. To strengthen accountability for the use of single-source methods, it mandates written justification, board-approval thresholds and reporting.

Clauses 19 and 20 confirm that evaluation may rest on non-price criteria including quality and sustainability, and establish a due-process regime for rejecting abnormally low bids - providing strengthened support for sustainable and quality-based procurement.

Clauses 23–25 consolidate officer conduct, establish a conflict-of-interest regime, and reconcile the anti-corruption mechanics. The anti-splitting rule (section 19C) is integrity content placed within the planning Part.

The Bill currently provides for criminal misconduct (section 38, referencing the Penal Code) and conflict of interest (section 37A), but no express administrative debarment power, which is introduced in Clause 38A. Resting debarment only on the general regulation-making power risks being ultra vires and open to challenge.

Allocation of integrity functions between the Chief and Senior Procurement Officers. The 2021 Act redefined the "Chief Procurement Officer" as the Secretary responsible for Finance and recast the operational head of the Central Procurement Unit as the "Senior Procurement Officer," but left unsettled which officer should exercise the Act's operational integrity functions. This draft proposes an allocation of responsibilities, but **the Government is invited to confirm that this allocation reflects the intended line of command, or to direct an alternative.**

- This Bill allocates the operational functions — Model-Document approval (s.25) to the Senior Procurement Officer, consistent with that officer's conflict-free standard under s.15(1).
- It retains with the Chief Procurement Officer the systemic single-source reporting (s.24(3)), the

anti-corruption mechanics of s.38 (notification, preliminary investigation, referral to the Office of the Attorney General, disciplinary referral, and Audit Office liaison) and the cross-entity conflict-of-interest escalation (s.37A(4)), the latter because it confers a directive power over entities that may be headed only by an officer senior to the Senior Procurement Officer. Where the conflict concerns the Chief Procurement Officer or a procurement before the Central Contract Award Board on which that officer sits, s.37A(5) refers the matter to the Office of the Attorney General.

Reform Focus [C]: Modernisation

Each clause below addresses an element of the Government of Kiribati request that guides this Technical Assistance project. The clauses may be retained in the Act or delivered through the Regulations:

- *Electronic procurement (cl. 9, s.10A; cl. 18, s.27)* answers mandate item (ii) on e-procurement. Legal-equivalence between paper and digital is stated in the Act; while the e-GP detail (electronic submission, encrypted sealed-bid storage, immutable audit trails, server-time deadlines, identity-blind submission, phased rollout and payment integration) will be integrated in the Regulations and a Manual-tier e-GP Guideline.
- *Sustainable procurement (cl. 10, s.10B)* answers mandate item (i) on SPP with a basic clause. More detailed rules will be enacted in Regulations on the topics of life-cycle costing and life-cycle assessment, as well as in the Sustainable Public Procurement Policy.
- *Procurement planning (cl. 6 and 13, Part IIA)* answers mandate item (iii) by creating a stand-alone section on Procurement Planning that recognizes the importance of this procurement stage in achieving value for money. It adds clauses on needs-assessment and aggregation duties, an enforceable on-plan rule and anti-splitting.
- *Procurement methods (cl. 14–15, ss.20, 20A)* answers mandate item (iii) by setting out new modern procurement methods that can reduce the overuse of single-source procurement. It recasts the principle of choice around the principle of “proportionality” and gives statutory footing to additional methods on an open list, with all conditions deferred to the Regulations.

Optional improvements

The following clauses have been proposed to fully modernize and align the Act to international and donor standards, but their inclusion is discretionary - to be decided by the Government:

Clause 11 (section 13) requires proactive publication of award data and an annual procurement report — a transparency measure the Government may also deliver and streamline through the e-GP Regulations.

Clause 22 (section 35) requires a named contract manager and control of variations — a quality measure that emphasizes the importance of contract management, but may be left to the Regulations.

Note on regulation-making power.

This Bill expands the Minister's regulation-making authority in several places (ss.10A, 10B, 20A, 24, and

others). The Government and the Maneaba may wish to consider the aggregate delegation, noting that each power is bounded by the principles in section 4 and the value-for-money requirement.

Consequential and alignment.

Clause 25(a) requires reconciliation of the irregular section 38 numbering in the current consolidated text. The Public Procurement Regulations 2020 and the Manual will require corresponding revisions:

- data retention periods,
- single-source thresholds and reporting,
- e-procurement procedure,
- the s.2(4) SOE list,
- s.20A flexible procurement method and arrangements,
- evaluation weightings and rated-criteria disclosure,
- the MEAT/most-advantageous award basis,
- abnormally-low-bid methodology,
- a structured tender-period regime (ADB-aligned: 4 weeks national / 6 weeks international, shortened only on stated grounds), and
- the standstill period (10 working days).

These are to be addressed in the planned Regulations and Manual revision, drawing on the relevant ADB Procurement Guidance Notes (e-Procurement, Sustainable Public Procurement, State-Owned Enterprises, Framework Agreements, Abnormally Low Bids, Standstill Period, Bidding-Related Complaints) and international standards (UNICTRAL Model Law), with consideration of peer country trends and practices.

Verification pending.

The cross-reference to “immediate family” in section 3 relies on the Leaders Code of Conduct Act 2016; the Leaders Code of Conduct (Amendment) Act 2021 should be checked to confirm that definition was not altered before enactment.

Companion Note — Regulations & Manual

This note captures the reform items that belong below primary legislation, so the Government sees the full instrument-by-instrument response to its mandate. It is the agenda for the next drafting phase (Regulations and Manual), not part of the Bill.

Regulations

- Records retention period (s.9); single-source approval thresholds and reporting cadence (s.24); SOE list and procurement process (s.2(4)).
- Method conditions for s.20A — framework agreements, pooled/aggregated procurement, request for quotations, repeat order, emergency procurement, agency-to-agency/international-organisation — each with trigger, threshold, competition requirement and guardrails (per the Methods Matrix).
- Evaluation: most-advantageous (MEAT) award basis; non-price weightings; rated-criteria disclosure obligation (criteria, weights and scoring method published in the bidding documents in advance); abnormally-low-bid identification and assessment method (judgment-based, not an arbitrary percentage).
- Tender periods: reference periods of 4 weeks (national) and 6 weeks (international) per ADB OCB guidance, shortened only on stated grounds — use of e-procurement, prior planning notice, urgency, or simple off-the-shelf requirements — with a minimum floor and recorded justification. Standstill period: 10 working days.
- e-GP procedure (s.10A/s.27): legal equivalence of e-signatures and submissions; encrypted sealed-bid storage with decryption only at opening; immutable audit trails admissible as evidence; server-time as authoritative clock; identity-blind submission until opening; data protection; phased rollout and payment/FI integration.
- Sustainable procurement (s.10B): life-cycle costing and assessment criteria; SPP Policy; domestic-development preferences consistent with s.7.
- Complaints Board (s.19): composition, timelines, procedure and remedies, consistent with the new statutory framework.
- Transparency (ss.10, 13): publication format and intervals for award data; content and timing of the annual procurement report.
- From the Government's request: Reg 24(7) — assign Evaluation Report responsibility to the Secretary of the Evaluation Committee on the Chairperson's advice; Reg 34 — add "as further detailed in the Manual" for minor non-compliances. Reg 26(4) deadline flexibility is delivered through the structured tender-period regime above rather than by removing "exceptional circumstances."

Manual

- Procurement Methods Matrix (the 11 methods with triggers, thresholds and guardrails) moved into operational guidance.

- Step-by-step procedure and templates for each method; sole-source justification template; conflict-of-interest declaration and register templates.
- A Manual-tier e-GP Guideline, modelled structurally on the Bhutan e-GP Guidelines 2023 and aligned to ADB Guidance Note No. 20, adapted to Kiribati institutions (CPU, Senior Procurement Officer, CCAB/CAC) and a phased-rollout reality with low-connectivity fallbacks.
- The Sustainable Procurement Guideline (GGGI/MELAD/MISE) incorporated as an appendix or policy section, extended beyond energy-efficient appliances.
- Evaluation guidance: worked examples of merit-point scoring; abnormally-low-bid assessment process.

Prepared as legislative drafting support for the Technical Working Group. This document is not legal advice; the Government may adopt, vary or decline any recommendation, and choices marked elective or recommended are presented for decision.