

IN THE PUBLIC SERVICE DISCIPLINARY TRIBUNAL
AT SUVA

PSDT CASE No. 05 of 2024

BETWEEN : THE PUBLIC SERVICE COMMISSION

EMPLOYER

AND : ATELAITE ROKOSUKA

EMPLOYEE

Appearances

For the Employer : Mr. Chauhan & Ms. Kapoor

(Attorney General's Chambers)

For the Employee : Mr. J. Cakau

(Vosarogo Lawyers)

Date of Hearing : 10 April 2025, 11 April 2025, 16 April 2025 and 07
May 2025.

Date of Ruling : 19 September 2025

R U L I N G

INTRODUCTION

1. Ms. Ateilaite Rokosuka is the Permanent Secretary for the Ministry of Fisheries and Forestry ("**Ministry**"). Every act committed by Ms. Rokosuka which is the subject of this Ruling, was taken in her official capacity as Permanent Secretary.
2. On 24 November 2023, Ms. Rokosuka signed a Power Purchase Agreement ("**Agreement**"). She did so in spite of a caution from the Office of the Solicitor General ("**SG**") to consult other relevant government departments and stakeholders first before signing the Agreement.

3. On 28 November 2023, just four (4) days after the signing of the Agreement, the Fiji Government made the decision to terminate it. It is not clear to the Tribunal why the Government took that step.
4. However, what is before the Tribunal now is a disciplinary action against Ms. Rokosuka. The action is initiated by the Public Service Commission ("PSC"). It is founded on various allegations. The main allegation is that Ms. Rokosuka signed the Agreement in total disregard of established procurement protocols.
5. The other party to the Agreement was a company called Infinite Power Clean Energy (Fiji) Pte Limited ("IPC"). IPC was purportedly registered in the US and in Vanuatu. The company was registered in Fiji on 27 June 2023.
6. According to official documents filed at the Office of the Registrar of Companies, IPC's registered office in Fiji is situated at "32 Cawa Road, Martintar, Nadi". This is also the residential address of IPC's local director.

THE AGREEMENT

7. As stated, the Agreement was a power-purchase arrangement. The arrangement was that IPC was to set up and install some wind turbines at various outstations of the Ministry. These outstations are all located in remote areas outside the national utility power grid of Energy Fiji Limited ("EFL").
8. The turbines were to harness wind energy to produce electricity. IPC would then sell the electricity produced to the Ministry at the pre-agreed price of FJD \$0.33 per kilowatt.
9. It is clear to the Tribunal that the Ministry entered the Agreement as part of its overall goal to reduce and phase out its dependency on the diesel-powered generators in its outstations, and, to replace them with cost-effective and eco-friendly alternatives.
10. The term of the Agreement was to be twenty (20) years¹.

¹ see paragraph 1.1.4 of Ms. Rokosuka's show-cause dated 28 February 2024 where she states at (iii) that the term of the contract is 20 years.

THE COMPLAINT

11. On 22 November 2023, immediately following the signing, a media statement was released to announce the Agreement and IPC's associated investment of FJD\$150 million. This caught the Deputy Prime Minister by surprise.
12. Apparently, neither the Deputy Prime Minister ("DPM") nor his Permanent Secretary were privy to any of the processes which led to the Agreement. In fact, very few people in the civil service or in government knew that Ms. Rokosuka had been negotiating with IPC prior to the Agreement.
13. Amidst the mystery surrounding the Agreement, and the confusion which followed it, the DPM lodged a complaint to the PSC. Frankly, concerns were raised about the origins of the Agreement and its implications. Other stakeholders also raised concerns with **PW5**.
14. The general feeling was that Ms. Rokosuka had acted in total disregard of established protocols when she procured the services of IPC through the Agreement, and, that she ought to be investigated accordingly.

THE INVESTIGATION TEAM'S REPORT

15. That complaint led the PSC Chairman to convene a three (3) member investigation team in early December 2023 led by **PW1**. The other two members were a Mr. Prasad of the Auditor-General's Office and a Mr. Naidu of the Office of the Solicitor-General.
16. The team handed its Report to the Chairman of the PSC in December 2024 . The Report was tendered to the Tribunal by **PW1**. According to **PW4**, Ms. Rokosuka was formally informed vide a letter about the investigation.
17. The findings in the Report led the PSC to write a letter of suspension to Ms. Rokosuka on 09 February 2024. The letter also required her to show cause.

¹RFPL, Ministry of Finance, Fiji National Provident Fund, Department of Energy, Cabinet, the Fijiian Competition and Consumer Commission (FCCC), Secretary to Cabinet.

SHOW CAUSE/SUSPENSION

18. On 29 February 2024, Ms. Rokosuka replied. Below we have tried to summarize her response to the main allegations put to her.
19. On the allegation that she failed to adhere to the Procurement Regulations 2010, Ms. Rokosuka said the allegation does not cite any specific provision and is too general.
20. Nonetheless, she asserts that she acted within her power under section 7 of the Procurement Regulation 2010⁷.
21. Ms. Rokosuka asserts that the value of IPC's investment is not to be confused with the value of the contract from the Ministry's vantage point⁸. While IPC did announce an investment of FJD \$110 million in its press release of 24 November 2023, the value of the contract for the Ministry is actually just the amount of electricity which it will purchase from IPC to run each ice plant. She describes this at paragraph 1.1.4 (iii) of her show-cause letter in the following terms:

...Appendix B of the Contract ... states the "Payments for Net Energy Output" to be \$2,000 per annum (2% per annum interest) which equates to \$8,160 for the first 4 years and would be \$40,800 if extrapolated for the term of the contract, which is 20 years. This terms of payment is subject to further negotiations and to be agreed upon by both parties

22. Ms. Rokosuka also states as follows at paragraph 1.1.3 (i) and (ii):

The Ministry was not procuring neither making any payments for goods, equipment or assets as IPC ... Would be designing, constructing, supplying, installing, and maintaining the units at no direct cost to the Ministry. This was part of the responsibility of IPC...

The Ministry was neither procuring a service as this is often made for consultancy works rendered by the vendor and received by the other party. No consultancy service were required under this Agreement.

⁷ as per paragraph 1.1.1 of her response dated 29 February 2024.

⁸ as per paragraph 1.1.2.

23. On the allegation that the Ministry failed to call for expressions of interest, Ms. Rokosuka said that the Ministry had conducted its own market research and found that there was only one single supplier in Fiji "to this cutting edge technology". She then states that section 31 (iv) of the Procurement Regulations 2010 "allows the Ministry to deal with single source procurement".
24. On her alleged failure to consult other government departments contrary to the SG's advice, Ms. Rokosuka said as follows:
- (i) following concerns raised by SG's office about the financial implications of the Agreement that may arise out of market exchange rate fluctuations if payment was to be in USD, Ms. Rokosuka said that the Ministry did negotiate with IPC which resulted in IPC offering FJD 0.33/Kwatts (VIP).
 - (ii) the Agreement with IPC of 24 November 2023 was subject to further negotiations.
 - (iii) the Ministry could not complete consultation with Ministry of Finance as the Agreement was terminated on 28 November 2023.
 - (iv) she did try to contact the Director of Energy but could not. However, IPC officials did talk to the DoE who confirmed his full support for the project. The project was not about rural electrification.
 - (v) with regards to cabinet, in August 2023, the Secretary to Cabinet caused two separate submissions to be withdrawn on the basis that "cabinet does not engage directly with any private company unless it has a bilateral cooperation with the state (of the mentioned company). In each of the two cases, the Ministry concerned had intended to seek cabinet approval to allow it to engage with a private corporation about some proposed project. Ms. Rokosuka said she did not seek cabinet approval based on these. She said she was shocked when she learnt that the Secretary to Cabinet had changed her position.
 - (vi) the then Minister for Forests had endorsed the project at a meeting of 19 July 2023.

THE CHARGES

25. The PSC's allegations are encapsulated in two charges. We set these out below:

Charge 1

MISCONDUCT: Contrary to sections 6(1) and (2) of the Civil Service Act 1999.

PARTICULARS: Atelaine Rokosuka failed to discharge your duties with care and diligence when you failed to take heed of the legal advice rendered from the Solicitor-General's Office and critically consult the relevant ministries and departments and follow due process before entering into an agreement with Infinite Power Clean Energy (Fiji) Pte Limited, on behalf of the Fiji Government.

Charge 2

MISCONDUCT: Contrary to sections 6(4) of the Civil Service Act 1999.

PARTICULARS: Atelaine Rokosuka failed to comply with all Applicable Act and subordinate legislation when you failed to adhere to Procurement Regulations 2010 and ensure proper due process was followed in the execution of the agreement between the Ministry of Fisheries and Forestry and Infinite Power Clean Energy (Fiji) Pte Limited, dated 24 November 2023.

THE HEARING

26. The hearing was conducted on 10 April 2025, 11 April 2025, 18 April 2025 and 07 May 2025. The following witnesses gave evidence for PSC:

	Name	Designation	Date
(a)	Mr. Vilitati Metaitini (PW1)	Retiree/Commissioner, Public Service Commission	10.04.25
(b)	Ms. Susan Kiran (PW2)	Secretary to Cabinet	11.04.25
(c)	Mr. Mikaele Belega (PW3)	Director of Energy	16.04.25
(d)	Ms. Reshmi Mala (PW4)	Head of Secretariat, Public Service Commission	16.04.25
(e)	Mr. Shri Goundar (PW5)	Permanent Secretary Finance	16.04.25

27. For the Respondent, only Ms. Rokosuka (DW1) gave evidence on 07 May 2025.

BACKGROUND

28. To set the background, the Tribunal takes "judicial" notice of various media reports (see footnotes) which document the Ministry's efforts, prior to the Agreement, to transition toward sustainable energy alternatives in its outstations.
29. In the years preceding the Agreement, the Ministry reportedly collaborated with some local providers to set up solar-powered systems in certain remote locations to replace the diesel-powered generators⁶ on which the Ministry had depended for many years. It was against this backdrop that IPC entered the landscape.
30. Mr. Robert Beam ("**Beam**") is the director of IPC. It is not clear to the Tribunal how he was first introduced to Ms. Rokosuka, or vice versa. Apparently, Beam presented himself as an American investor.
31. Beam had visited Fiji a few times in the years preceding the Agreement. He did so on a visitor's permit. During one of these visits, he became interested in investing here. He had, at his disposal, some turbine technology which could harness the kinetic energy of wind and generate electricity. The plan was to set this up in Fiji and then sell the power produced to EFL. This seemed an ideal opportunity to contribute to Fiji's renewable energy mix.
32. During one of his visits, Beam met **PW3**. He told **PW3** of his aspirations. **PW3** then gave Beam an overview of the due diligence framework and advised Beam to, first, carry out a feasibility study, before venturing to commercialize the technology in Fiji.
33. **PW3** also advised Beam to apply for a generating license and a retail license from the Fijian Competition and Consumer Commission ("**FCCC**"). The former was to allow Beam to harness power in Fiji. The latter would permit Beam to sell power.

⁶e.g. solar-powered Government-owned ice plant on Rabi Island and on Kioho, Vavua Levu, featuring a 37.2kWp solar array and 68.4kWh lithium battery storage (see [FreezeReader.com](http://www.FreezeReader.com) - Digital Newspaper & Magazine Subscriptions; [FreezeReader.com](http://www.FreezeReader.com) - Digital Newspaper & Magazine Subscriptions; Fiji Government - [RAKE VILLAGERS THANK GOVERNMENT FOR HELP](http://www.fiji.gov.fj); [Solar power system boosts operation of ice-plant](http://www.fiji.gov.fj) - [FCC News](http://www.fiji.gov.fj); [13 solar freezers for communities](http://www.fiji.gov.fj) - [The Fiji Times](http://www.fiji.gov.fj) as accessed on 24 August 2025.

34. Apparently, Beam was also talking to Ms. Rokosuka around the same time. PW3 was not aware of this. He only came to know of the arrangement between Ms. Rokosuka and IPC after the Agreement was signed. He said he was most surprised.

Solicitor-General's Advice

35. At this juncture, the Tribunal reflects on the period leading to the Agreement.
36. At some point after they began talking, Ms. Rokosuka and IPC made the decision to progress with formalizing some sort of an Agreement. Ms. Rokosuka submitted a first draft to the SG's office. Two successive drafts were developed and re-submitted to the SG's office following feedback on the earlier versions.
37. During this vetting period, the SG's Office actually issued three (3) letters to Ms. Rokosuka. These were dated **28 September 2023, 13 October 2023** and **25 October 2023**.
38. The letters cautioned Ms. Rokosuka to consult and engage with other government stakeholders before signing the Agreement.
39. In the letter dated 25 October 2023, the SG's Office cautioned as follows at paragraphs 4 to 7 (emphasis ours):

4. Please also take note of our comments below:

- (a)
- (b)
- (c) in our 13 October 2023 memorandum, as part of due diligence, we had advised the Ministry to consult the Ministry of Finance on potential financial implications particularly market exchange rate fluctuations given that payment is in USD currency, verification of the payment schedule and confirmation of whether the Agreement amounts to a procurement of a service; and
- (d) we had also advised the Ministry to consult the Department of Energy on the technical aspects of the Agreement as well as seek Cabinet endorsement if the Agreement did not amount to a procurement of a service.

5. Accordingly, we take note of the Ministry's response and position that consultation with other ministries is not required given that the Agreement is with the Ministry and Developer only. We also note that the Ministry has consulted the Secretary to Cabinet and has been informed that Cabinet approval will not be required as Cabinet does not engage with private entities, we do however reiterate our advice.
6. Notwithstanding the Ministry's response, our Office advises the Ministry to exercise its discretion in executing the Agreement keeping in mind our advice as set out in paragraph 4 herein and as discussed at the Meeting, as this may have potential legal and financial implications.
7. Please note that we have not reviewed the Agreement from a commercial or policy perspective and assume that the rights and obligations set out are acceptable to the Ministry.

Ms. Rokosuka Did Not Heed the Advice

40. However, Ms. Rokosuka did not heed the advice. She wrote memoranda to the SG. Below, we set out an extract from Ms. Rokosuka's memorandum dated 13 October 2023 to the :

1. We acknowledge receipt of your memorandum dated 13 October 2023 regarding the above mentioned subject.
2. Additionally, we also refer to our 12 October 2023 meeting. During the meeting, concerns regarding the agreement from your office were thoroughly discussed.
3. The Ministry has duly noted the concerns raised and appreciates the suggestions provided.
4. IPC has approached and delivered a presentation to the Ministry. This is an opportunity for us to reduce our expenditures on fuel for our ice plants and to have a consistent supply of ice for our fisher folks as this will serve as a backup power supply. This is an agreement with the Ministry, the procurement guidelines are within the authority of the Ministry. We are not paying for the units but for power consumption.
5. Regarding consultations and support letters from other agencies, we kindly request your office to review the agreement's legality. It's crucial to emphasize that

this agreement solely involves the Ministry and the company.

6. As advised by the Secretary to Cabinet, arrangements of this nature do not require Cabinet approval, as the Cabinet does not engage with private entities. Therefore, Cabinet's approval is not necessary, eliminating the need for support letters.

41. In the Tribunal's view, the tone of the above memorandum suggests that Ms. Rokosuka was already settled on a stance and was not open to any advice to the contrary. Her subsequent actions were actually informed by that stance.

THE GOVERNMENT'S BROADER PROCUREMENT POLICY

42. The Government's procurement policy is set out in the Procurement Regulations 2010, the Finance Instructions and the Financial Management Act.

43. Regulation 2 of the Procurement Regulations 2010 defines "procurement" as follows:

"procurement" means the overall process of acquiring goods, civil works and services which includes all the functions from the identification of needs, selection and solicitation of sources, preparation and award of contract and all phases of contract administration and management through to the end of the services contracts or the disposal of the asset;

44. Below are some key provisions which were alluded to by PW1, PW2, PW3, PW4, PW5 and Ms. Rokosuka at the hearing.

- (i) Permanent Secretaries execute and manage all procurement contracts signed on behalf of their Ministries or Departments (**Regulation 7(c)**).
- (ii) open tendering is the default method of procurement (**Regulation 30 (2)**).
- (iii) for every procurement exceeding FJD 50,000, an open tender process shall be required, unless a waiver is granted (**Regulation 30 & Regulation 48**).
- (iv) however, other methods of procurement may be engaged in certain cases, provided the conditions for their use are satisfied. These other methods are set out in

Regulation 31(1)(i) to(iv). Included in these other methods is **single source procurement**. The conditions are set out in the Procurement Guidelines (**Regulation 31**).

- (iv) the Permanent Secretary has delegated authority to procure goods, services and works with a procurement value of up to \$50,000 - 00 (**Regulation 27 (1)**).
- (v) the Government Tender Board, on the other hand, is the procurement authority for any goods, services and works with a procurement value of \$50,001 or above (**Regulation 27 (1)**).
- (vi) the value of a procurement is assessed on account of a wide range of factors (**Regulation 28 (1)**).
- (vii) in carrying out his or her delegated procurement authority, the Permanent Secretary must obtain a minimum of three (3) competitive quotations (**Regulation 29 (1)**).
- (viii) in performing his functions, a Permanent Secretary must, *inter alia*, promote the guiding principles of procurement in Regulation 3 (a) to (e) (**Regulation 7 (b)**).
- (ix) the guiding principles in Regulation 3 (a) to (e) are:
 - value for money;
 - maximize economy and efficiency and the ethical use of Government resources;
 - promote open and fair competition amongst suppliers and contractors;
 - promote the integrity of, fairness and public confidence in the procurement process; and
 - achieve accountability and transparency in the procedures relating to procurement.
- (xi) in order to participate in procurement proceedings, all potential bidders must *inter alia* have legal capacity to enter into the contract.

(Regulation 36 (1))

ISSUES FOR DETERMINATION

45. Against that background, and in light of the charges preferred by the Public Service Commission, the Tribunal sets out the following issues for determination:
- (i) whether or not Ms. Rokosuka failed to act with care, diligence, and integrity in the circumstances of this case, in breach of sections 6(1) and 6(2) of the Civil Service Act 1999?
 - (ii) whether or not Ms. Rokosuka acted in breach of the applicable procurement laws and in excess of her delegated financial authority, and if so, whether she breached section 6(4) of the Civil Service Act and Procurement Regulations 2010?
 - (iii) was procedural fairness observed in the investigation process?

THE EVIDENCE

Was this a "Procurement"?

46. According to **PW5** and **PW3**, the Agreement was a "procurement". This would be based on their understanding of Regulation 2 of the Procurement Regulations 2010.
47. Ms. Rokosuka appears to accept that the Agreement was so, as per her communication to the SG's Office where she asserted that all was within her procurement authority. However, the Tribunal notes that in her show-cause letter of 29 February 2024 to the PSC, Ms. Rokosuka seemed to assert that the arrangement with IPC was:

"...not procuring neither making any payments for goods, equipment or assets as IPC Clean Energy would be designing, constructing, supplying, installing and maintaining the units at no direct cost to the Ministry. This was part of the responsibility of IPC as outlined in the Power Purchase Agreement section 6.1¹⁰"

¹⁰ see paragraph 1.1.3 (i) of Ms. Rokosuka's show cause submissions.

Scoping & Structured Analysis

48. **PW1, PW2, PW3 and PW5** all said that before Ms. Rokosuka signed the Agreement, she ought to have carried out a scoping exercise. This would enable the Ministry to gauge the level of investment a developer would have to make in order to meet the target(s) as well as the expected costs, the forecasted returns to the investor, and the overall constraints.
49. **PW1, PW2, PW3 and PW5** all said that the policy guidance of cabinet, the expertise of the Ministry of Finance, and the technical knowledge of the Director of Energy, would have to be engaged in the scoping exercise.
50. A structured analysis would have to follow the scoping exercise. The open-tender process happens thereafter.
51. Mr. Cakau asserted when he cross-examined **PW1, PW2, PW3 and PW5** that an *advisory team* of officers from the Ministry had carried out some preliminary assessment for Ms. Rokosuka. She only signed the Agreement following clearance from her team.
52. Mr. Cakau established from his cross-examination that **PW1's** team did not interview any member of Ms. Rokosuka's advisory team.
53. **PW1** said that there was no need to interview Ms. Rokosuka's advisory team because information gathered from key stakeholders strongly suggested that Ms. Rokosuka did not follow the SO's advice, nor did she consult other key government officials, nor did she follow the Government's procurement protocols.

Procurement Value

54. In his cross-examination of **PW1, PW2 and PW5**, Mr. Cakau, asserted that the IPC procurement fell within Ms. Rokosuka's delegated procurement authority. This is because the total estimated cost of power to be purchased from IPC under the Agreement was assessed at a mere S40,860 (calculated at the pre-agreed unit price of PJD \$0.33 per kilowatt). Accordingly, she was entitled to act on delegated authority¹ and was not required to seek cabinet approval or consult any other government official.

¹ Regulation 7 (c) and Regulation 20 (1) read together.

55. **PWS** responded that there were a number of critical elements in the Agreement which Ms. Rokosuka failed to scrutinize. That failure led her and her team to err in their assessment of the procurement value.

What Did They Overlook?

56. **PWS** said there was more to the Agreement than meets the eye. He said there was a need to obtain the Ministry of Finance's clearance at the outset, to see if the Agreement would breach any of the government's shareholder-obligations to other shareholders in EFL.

57. **PWS** added that, given that IPC was to commit \$150 million capital investment into the project, the company would have to be setting an annual target for itself in order to recover its capital costs - let alone, generate a sustainable return.

58. If one were to consider that:

- (i) the pre-agreed price was a mere FJD 0.33 cents per kilowatt,
- (ii) the target consumer base consisted of twenty-seven (27) maritime ice-plants only,
- (iii) these plants would have a relatively modest consumption pattern,

then it is highly likely that there would be some critical financial and strategic aspects which Ms. Rokosuka failed to take into account.

59. **PWS** said that the projected revenue stream would be too little for IPC to recover its capital investment - let alone - yield a sustainable return - during the procurement period. The only way for IPC was through a high tariff structure on the Ministry.

60. The Tribunal understands that the tariff structure is that which would determine how IPC will eventually bill the Ministry. Such structures typically take into account several factors. The pre-agreed price of FJD 0.33 cents per kilowatt would be, but just one of those. **PWS** said that, under the Electricity Act 2017, it is the PCCC which determines the tariff.

61. **PWS** said it is highly likely that there were hidden risks. The Agreement may have placed the burden for these on the government

He said that Ms. Rokosuka ought to have consulted him by virtue of his position as the State's Chief Financial Officer before she signed the Agreement. Taking into account all the parameters, the procurement value of the Agreement included additional elements which Ms. Rokosuka did not understand.

Cabinet Approval Not Sought! Other Stakeholders Not Consulted!

62. As stated, the Office of the Solicitor-General did caution Ms. Rokosuka to consult other Government Ministries and Departments. The Ministry of Finance, the Director of Energy, and the Secretary to Cabinet were all identified by the Solicitor-General as stakeholders in a project of that nature.

63. Ms. Rokosuka did not heed the advice for the following reasons.

64. Firstly, she seemed settled in the view that the Agreement was either not a procurement, or, if it was, then it was one which fell within her delegated financial authority.

65. Hence, there was no reason for her to refer the matter to the Government Tender Board under Regulation 22 (2) or seek the advice of the Ministry of Finance.

66. Secondly, with regards to cabinet, Ms. Rokosuka relied on two precedents where the Secretary to Cabinet had advised in August 2023 that Cabinet only looks at policy documents and¹:

".....does not engage with private entities".

67. Hence, here was no need to seek Cabinet approval.

68. Thirdly, with regards to the Director of Energy, Ms. Rokosuka said that she did try several times to call him by mobile phone but could not reach him. Eventually, she decided to just proceed with the Agreement².

Why Cabinet Approval Needed! Why Other Stakeholders Need to be Consulted!

69. PW2 said while Cabinet usually only looks at policy documents and does not engage directly with private companies

¹ see paragraph 24 (v) above.

² see paragraph 24 (vi) above.

participating in a tender process, the IPC-procurement case was different because:

- (i) the wind-turbine technology which IPC was seeking to introduce, was still a novelty in Fiji. Ms. Rokosuka was aware of this. She described it as a "cutting edge" technology (see paragraph 23 above).
 - (ii) the Government has an overarching Energy Policy, which, *inter alia*, has a Green Energy component.
 - (iii) however, because IPC's wind-turbine technology would be a novelty in Fiji, its introduction here would pose new operational challenges. These would require a focused regulatory regime to be already in place before the technology is introduced. For this, cabinet will need to develop a clear sub-policy.
 - (iv) hence, before any procurement action is taken, cabinet ought to have been consulted to draw up a sub-policy guideline.
70. **PW2** added that the advice she gave at the 03-August-2023 DCS meeting was not intended to be general guidance. Rather, she was responding to a particular query by two other Permanent Secretaries. The query related to a planned project involving collaboration with private enterprises.
71. **PW3** said that, generally, there are two types of procurements relating to energy supply:
- (i) on-grid power supply - where the investor produces power and then connects to the EFL grid. To do this, the investor must have an agreement with EFL and FCCC.
 - (ii) off-grid power supply - this happens in remote areas located off-grid. Here, the Department of Energy provides technical support and advice to investors.
72. **PW5** emphasized that there was an element of inter-departmental accountability involved. It goes beyond standard procurement compliance.

Single-Source Procurement

73. It is clear that Fiji has, not a single local provider, of the wind-turbine technology which IPC was seeking to introduce through the Agreement.

74. For that reason, Ms. Rokosuka did not foresee any need to call for expressions of interest in compliance with the competitive open tender process under the Procurement Regulations 2010 (see paragraph 23 above).
75. According to **PW2**, even if the Agreement was within Ms. Rokosuka's procurement authority, she would still be required to obtain three random quotations as per Regulation 27 (1). **PW1** said that Regulation 27 (1) is meant to ensure transparency and accountability.
76. **PW2** acknowledged that there are no established local providers or suppliers of wind-turbines on the local market - from whom Ms. Rokosuka could have obtained other quotations.
77. However, given that the technology would be a novelty in Fiji, cabinet ought to have been consulted to:
- (i) initiate the process of setting up a regulatory structure for the commercialisation of the technology,
 - (ii) decide whether to call for expressions of interest and to extend the call to offshore providers.
78. While Regulation 31 (1)(iv) of the Procurement Regulations allows single-source procurement, there are conditions to be satisfied before this method can be applied. The conditions are set out in the Procurement Guidelines of the Ministry of Finance (see Regulation 31 (2)).

Regulatory Regime - FCCC

79. **PW3** and **PW5** both said that under section 5(1) of the Electricity Act 2017, the FCCC is the Regulator. Before IPC can harness kinetic-wind energy to generate power, it must obtain a generating -license from FCCC. Also, before IPC can sell power, it must first obtain a retail-license from FCCC.
80. Furthermore, the FCCC, as Regulator, is mandated to determine the tariff.
81. In his cross-examination of **PW1**, Mr. Cakau established that **PW1**'s team did not interview the FCCC in their investigations. Mr. Cakau also highlighted that the FCCC, in a media interview, had confirmed having met with the IPC - and that the FCCC had yet to issue any license to IPC.

No Background Check!

82. The evidence of **PW1**, **PW2**, **PW3** and **PW5** is that Ms. Rokosuka executed the Agreement without any prior background check on IPC or its main director.
83. **PW1** said that inquiries conducted by the Fiji National Provident Fund and the Registrar of Companies revealed that IPC did not exist in any US Registry. This was contrary to a claim by the company.
84. In addition, investigations revealed that the IPC was not properly registered in Vanuatu and that Beam has a criminal record.
85. **PW1**, **PW3** and **PW5** said that IPC executed the Agreement with the Ministry on a visitors permit, and without any generating or retail license from FCCC.
86. These findings raised questions about IPC's and Beam's legitimacy.

Miss Rokosuka's Case

87. Ms. Rokosuka's show-cause letter to PSC (see paragraphs 18 to 24 above) sums up her position. In addition to that, her viva voce evidence before the Tribunal emphasized the following points:
 - (i) the contract was to bring clean and reliable energy to 27 rural ice plants that used to run on unreliable diesel generators.
 - (ii) Ms. Rokosuka wanted to help the off-grid communities who depend on the Ministry's ice plants. The use of renewable energy would vastly improve the Ministry's service. It would also save government costs on fuel transportation as well as help protect the environment.
 - (iii) the project was to be paid by IPC, not the Ministry. Hence, no government money would be used. Ms. Rokosuka simply followed the rules as she understood them.
 - (iv) the contract was under \$50,000, which meant Ms. Rokosuka could approve it without extra permission. She also sought and obtained legal advice from the

Solicitor-General's Office and listened to her technical team.

- (v) Ms. Rokosuka's line Minister had told her to proceed with the project. Thus, she had support from the top.
- (vi) even though Ms. Rokosuka did not talk face to face with some key government officials, she relied on written advice and past-experience to guide her decision.
- (vii) The contract was signed but stopped a few days later after a meeting with senior leaders. No money from the Ministry was spent, and the project did not even begin.
- (viii) Ms. Rokosuka admits that she could have done some things differently. However, she always tried to do the right thing. She wanted to help the country by bringing green energy to remote places and followed her team's advice.

88. As noted, **PWL** did confirm that his Investigation Team never interviewed any of Ms. Rokosuka's team of officers. They also did not interview the CEO of the Fijian Competition and Commerce Commission.

THE CIVIL SERVICE CODE OF CONDUCT

89. Section 7 of the Civil Service Act 1999 provides *inter alia* that a breach of the Civil Service Code of Conduct ("**Code of Conduct**") is a ground for disciplinary action or removal. Section 6 sets out fourteen codes which are spread out in subsections (1) to (14).

90. Civil servants exercise statutory authority. They execute policy decisions¹¹. They also manage public resources. As such, their actions affect the public and can have a tremendous influence on public confidence in the government. They are, thus, accountable to both the public¹² and to the government.

¹¹ section 4 (9) provides:

The public service is responsible to the Government in providing frank, honest, comprehensive, accurate and timely advice and implementing the Government's policies and programs.

¹² section 4 (4) of the Civil Service Act 1999 provides:

The public service carries out the Government's policies and programs effectively and efficiently and with due economy.

91. Thus, the Code of Conduct sets the ethical standards which civil servants are expected to strictly adhere to.
92. In State v Public Service Commission, Ex parte Kotobalavu (2004) FJHC 14; HB30010J.20028 (29 March 2004), the High Court explains the Code thus:

... civil servants are servants of the State and owe a duty of loyal service to the State, [and].. to the Government of the day. The theme of such a code is derived from the need for civil servants to be, and to be seen to be, honest and impartial in the exercise of their duties.

93. As stated above, the first charge against Ms. Rokosuka is laid pursuant to section 6 subsections (1)¹² and (2)¹³. The second is laid pursuant to section 6 subsection (4)¹⁴.

Duty to Act Honestly

94. Section 6 (1) provides that an employee must behave honestly and with integrity in the course of employment in the public service. Section 6 (2) requires such an employee to behave with care and diligence.
95. In civil law, the test for "dishonesty" is an objective one (as per UK Supreme Court in Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club) [2018] AC 391 at paragraph 62)¹⁵.

¹²section 6 (1) provides:

6.-(1) An employee must behave honestly and with integrity in the course of employment in the public service.

¹³Section 6 (2) provides:

6.-(2) An employee must act with care and diligence in the course of employment in the public service.

¹⁴Section 6 (4) provides:

6.-(4) An employee, when acting in the course of employment in the public service, must comply with all applicable Acts and subordinate legislation.

¹⁵ the UK Supreme Court said in Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club) [2018] AC 391 at paragraph 62:

Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whether an action was honest or dishonest. The liability of an accessory to a breach of trust is, for example, not strict, as the liability of the trustee is, but (absent an exoneration clause) is fault-based. Negligence is not sufficient. Nothing less than dishonest assistance will suffice. Successive cases at the highest level have decided that the test of dishonesty is objective. After some hesitation in Twinsectra Ltd v Yardley (2002) UKHL 12; [2002] 2 AC 164, the law is settled on the objective test set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan (1995) 2 AC 375; see Barlow Clowes International Ltd v Eurotrust

96. This was reiterated by the Privy Council in Barlow Clowes International Ltd v Eurotrust International Ltd [2005] UKPC 37; [2006] 1 WLR 1476, by Lord Justice Hoffmann who said at pp 1479-1480:

Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards.

(Tribunal's emphasis)

97. In Wingate v SRA [2018] EWCA Civ 366, Lord Justice Jackson said in paragraph 94:

..... As explained most recently in Ivey, the test for dishonesty is objective. Nevertheless, the defendant's state of mind as well as their conduct are relevant to determining whether they have acted dishonestly.

Duty to Act with Integrity

98. With regards to "integrity", Jackson LJ said at paragraph 95:

95. ... As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty.

99. At paragraph 97, Jackson LJ goes on to explain what "integrity" means in a **professional code of conduct**:

97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

(Tribunal's emphasis)

International Ltd [2005] UKPC 37; [2006] 1 WLR 1476, Abou-Ramhah v Abacha [2006] EWCA Civ 1492; [2007] Bus Lw 270; [2007] 1 Lloyd's Rep 115 and Starglade Properties Ltd v Nash [2015] EWCA Civ 1314; [2015] Lloyd's Rep FC 102. The test now clearly established was explained thus in Barlow Clowes by Lord Hoffmann, at pp 1479-1480 ----

100. Jackson LJ then goes on to say that integrity, in a professional code of conduct, really means adhering to ethical standards of the profession:

100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

101. At paragraph 102, Jackson LJ cautions that Courts and Tribunals must not set unrealistic high standards:

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards... The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public...

Duty of Care & Diligence

102. The duty of care and diligence in section 6 (4) of the Civil Service Act 1999, in turn, imposes upon every civil servant an obligation to take reasonable steps to acquaint himself or herself with all relevant material or information before making a decision (**Secretary of State for Education v Tameside MBC** [1977] AC 1014).

103. In discharging that duty, the civil servant must, *inter alia*, make sufficient and relevant inquiries. In other words, it is not enough to just make inquiries for the sake of it.

104. In practice, this obligation may require the public official to consult outside bodies (as per Laws J in **R v Secretary of State for Education ex p London Borough of Southwark** [1995] ELP 306, 323) and/or to consult other appropriate government Departments or Ministries (**R v Camden B.C ex parte Adair** (1977) 29 HLR 236).

105. In public procurement, accountability is process-driven. This means that the established procurement protocols and procedure are, by design, meant to be strictly followed. In other words,

a procurement official has no discretion as to whether or not to follow the procedures in any given situation. He or she must adhere to the principles of open competition, equality, transparency, objectivity, fairness and accountability in Regulation 3 of the Procurement Regulations.

106. Accordingly, good intentions is unlikely to justify a procurement decision which bypasses the above principles let alone shield an official from accountability.
107. That position is founded on the need for accountability and maintaining public trust in the handling of public funds in public procurement. It also protects institutional integrity.

FINDINGS

Miss Rokosuka - Acted with Good Intention

108. In the Tribunal's view, Ms. Rokosuka acted in pursuit of a legitimate aim. This view is based on the points raised in paragraph 87 above. Furthermore, no evidence was led to suggest that Ms. Rokosuka stood to gain personally from the Agreement or its implementation¹⁰.
109. Having said that, the question remains as to whether or not her altruistic goals justified the approach she took in this case.
110. The IPC-Agreement was an act of "procurement"¹¹. The Tribunal finds that Ms. Rokosuka erred in four (4) general ways when she signed the Agreement:
 - (i) in her thinking that the IPC-Agreement was not a procurement; and/or
 - (ii) in her belief that even if the IPC-Agreement was a procurement, that it fell within her delegated procurement authority on account of its value;
 - (iii) in her assessment of the procurement value, and;

¹⁰ PW1's and PW5's testimonies that they believed Ms. Rokosuka may have acted with "good intentions".

¹¹in terms of Regulation 2 of the Procurement Regulations 2010.

- (iv) in entering into the IPC-Agreement in complete defiance of the procurement principles of open competition, equality, transparency, objectivity and fairness.
111. These were the very errors which the SG had cautioned Ms. Rokosuka to avoid.
112. However, Ms. Rokosuka was already settled in the view that the Agreement was not a procurement, or, if it was, that it fell within her delegated procurement authority in any event.
113. Based on the evidence of PW1, PW2, PW3 and PW5, which the Tribunal accepts, the Tribunal finds that Ms. Rokosuka was ill-advised in having positioned herself in that view.
114. Had Ms. Rokosuka taken heed of the SG's advice and engaged the above officials, she would have been duly guided toward the correct policy foundation and the procedural course to take thereafter.
115. As Permanent Secretary, Ms. Rokosuka occupies a privileged and a trusted role as the most senior public officer within her Ministry. She is the Chief Accounting Officer as per section 127 of the Constitution and section 6 A of the Financial Management Act 2004. She executes and manages all procurement contracts on behalf of her Ministry as per Regulation 7 (c) of the Procurement Regulations 2010.
116. Her seniority as such does not confer *carte blanche* power to disregard the mandatory procurement protocols. On the contrary, it demands of her the highest form of vigilance in ensuring that the protocols are complied with.
117. The Solicitor-General's advice was more than sufficient as a warning to tread carefully. She did the exact opposite. Her actions were not a result of mere inadvertence (which in any event, is not excusable). Rather, they were the result of a view which she had settled upon, which was based on an incorrect or incomplete understanding of the procurement protocols and the public policy which underlie them.
118. Society expects of her a relatively higher standard in her decisions. This entails her ensuring that she will be well informed before she makes any decision.

119. However, she fell short of this standard. She proceeded to sign the Agreement with IPC on 24 November 2023 without consulting the other senior public stakeholders and thus found herself caught in a procurement exercise which bypassed all the established protocols. She, thus, breached her duty to comply with all relevant laws under section 6 (4) of the Civil Service Act.
120. Below, we tabulate a summary of our findings:

Section Obligation		Breach
6(1)	Exercise care and diligence	Ignored legal advice and failed to consult the Ministry of Energy, Ministry of Finance and Secretary to Cabinet on an off-grid project
6(2)	Comply with lawful instructions and act professionally	Proceeded with contract despite legal advice to consult other agencies
6(4)	Comply with applicable legislation and regulations	Breached Procurement Regulations 2010; exceeded financial approval authority for contractual value

PROCEDURAL FAIRNESS

121. It is established that **PW1's** team did not interview any member of Ms. Bokosuka's advisory team. It is also established that **PW1's** team did not interview the CEO of FCCC or any officer from that institution. Notably, however, the CEO of FCCC, in a media interview, did admit having had talks with IPC officials in the lead up to the Agreement.
122. The question is whether or not **PW1's** team's investigation failed to adhere to the principles of procedural fairness in light of the above.

123. The Tribunal answers the above question by taking note of the following:

- (i) the Agreement was, for all practical purposes, a "procurement" in terms of the definition of the word in Regulation 2 of the Procurement Regulations 2010¹⁸
- (ii) the value of the procurement, in all likelihood, exceeded Ms. Rokosuka's delegated authority. It was not her call to make that determination. That was the call of the Chief Financial Officer of Government (PW5)
- (iii) even if the procurement fell within her delegated financial authority, it did not confer *carte blanche* to then engage in a single-source procurement. There were certain steps and conditions to take before she could embark on that. Again, she ought to have sought the advice of PW5.
- (iv) that Beam signed the Agreement in his capacity as director of IPC whilst he was in Fiji on a visitor's permit.
- (v) at the time of the Agreement, IPC did not have a generating license and/or a retail license from FCCC, raising questions about whether the company is qualified as per Regulation 36 (1) (a)¹⁹.

124. Having said all the above, it should be emphasized that the Tribunal is the fact finder and decision maker in this disciplinary case - and not PW1's investigation team.

125. PW1's team merely gathered material upon which PSC's decision was made to pursue this disciplinary case. Having done that, the PSC still has to establish the allegations before this Tribunal.

126. It follows that, even if PW1's investigation was flawed, the Tribunal hearing serves as a corrective feature. It provided

¹⁸ Regulation 2 defines "procurement" as:

"...the overall process of acquiring goods, civil works and services which includes all the functions from the identification of needs, selection and solicitation of sources, preparation and award of contract and all phases of contract administration and management through to the end of the services contracts or the disposal of the asset;

¹⁹ Regulation 36(1)(a) provides:

36.- (1) In order to participate in procurement proceedings, all potential bidders in addition to the requirements contained in any solicitation documents, must satisfy the following conditions to the satisfaction of the Board:- (a) that they have the legal capacity to enter into the contract;

Ms. Rokosuka an opportunity to respond to the allegations in detail, challenge the evidence, call witnesses and even be represented by a lawyer. She was given every opportunity to present her best case to the Tribunal.

127. For the record, Ms. Rokosuka did inform the Tribunal days before the hearing began that she was calling her team and the CEO of ECSC to testify on her behalf.
128. However, she chose not to call them on the last day of the hearing.

CONCLUSION

129. The Tribunal finds that that the allegations against Ms. Rokosuka have been proven in respect of both charges.

130. The range of sanctions available to the Tribunal is set out in Regulation 22 (1) of the **Civil Service (General) Regulations 1999** the Permanent Secretary of the Public Service Commission is directed to implement one or more of the following penalties:

- (i) terminate the employees employment;
- (ii) demote the employee, provided that the disciplinary charge is related to performance and the employee had a good performance record at a lower level prior to promotion;
- (iii) transfer or redeploy the employee to other duties, provided that the disciplinary charges relate to the specific location of the employee;
- (iv) defer a merit increase in remuneration for the employee for a specified period;
- (v) reduce the level of the employee's remuneration, provided that the reduction is within the salary or classification of the position occupied;
- (vi) impose a penalty of not more than 10% of the employee's annual salary;
- (vii) reprimand the employee;
- (viii) forfeit all or part of the employee's remuneration which was withheld during the period of suspension from duty."

131. The tribunal would like to hear from the employee and employer prior to considering the sanctions which may be imposed. The Tribunal orders accordingly.

Signed _____

Mr. Anare Tuilevuka

[Chairman - Public Service Disciplinary Tribunal]

Date:

Signed _____

Ms. Deepika Prakash

[Member - Public Service Disciplinary Tribunal]

Date:

Signed _____

Mr. Jeremiah N.L. Savou

[Member - Public Service Disciplinary Tribunal]

Date:

